



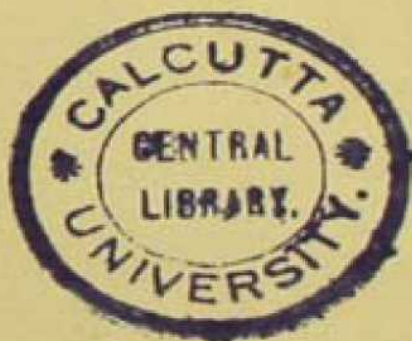
REMINISCENCES AND EXPERIMENTS IN ADVOCACY

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K. N. K.

REMINISCENCES
AND EXPERIMENTS
IN ADVOCACY



UNIVERSITY OF CALCUTTA

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PRESENTED TO THE
LAW STUDENTS OF THE CALCUTTA UNIVERSITY
WITH ALL GOOD WISHES,
BY ONE WHO REVERES THE LAW
AND ALL THAT IT STANDS FOR
IN OUR NATIONAL LIFE AND DEMOCRATIC INSTITUTIONS.

FOREWORD

As the Vice-Chancellor of this University, I had frequently to call on Dr. K. N. Katju, who was then the Chancellor, for his advice and guidance on matters concerning the University. After discussion on these matters was over, our talk naturally centred around our experience at the Bar where we have spent the best part of our life. Dr. Katju during the course of such conversation told me one day how his father wanted him to be a Doctor of Medicine, but how the character, ability and learning of Sir Gooroodass Banerjee, for whom he entertains the profoundest respect, inspired him to adopt the legal profession. Dr. Katju was quite a young man when he became a professional lawyer. He told me about the early incidents of his life at the Bar and his struggles. One of the best stories I have ever heard relates to an eccentric client (Buchhi Singh) of his. Dr. Katju took up his case, which others had refused, and he won it. The tact and ability which he displayed in the case showed that he was destined one day to be a leader of the Bar, as he in later years became. The Hon'ble the Chief Justice of Calcutta, who was a Judge of the Allahabad High Court, when Dr. Katju was an Advocate there, has often told me—myself being a Judge of the High Court—as to how Dr. Katju used to put his point before the Court. It was always direct and concise. He would never beat about the bush. Dr. Katju told me that he adopted the Sherlock Holmes's methods for ascertaining the vital points of the cases that were entrusted to him. It was really a feast to hear the stories. I wanted that our University Law College students should partake of this feast, and accordingly I requested Dr. Katju to come one day and relate to the students his reminiscences at the Bar.



He readily agreed. In matters concerning the welfare of students Dr. Katju never failed.

In course of time the students of the Law College requested me to invite Dr. Katju to preside at an annual function of theirs. I invited Dr. Katju to come and preside over the function organised by the Law College students in September, 1951, and reminded him of his promise to relate his reminiscences. He was ready with his articles but for want of time he could not read them at the function. I then requested him to allow us to print the articles as a University publication. To that he agreed. Hence this small book. I have got this booklet printed in the earnest hope that our students will be benefited by reading it. There is always room at the top. There is sufficient scope in our profession even today for men who are earnest, who are industrious and who are honest.

SENATE HOUSE,
Calcutta.

S. N. BANERJEE,
Vice-Chancellor.

PREFACE

My esteemed friend the Vice-Chancellor, Mr. Justice Sambhunath Banerjee, is partly responsible for the publication of this small book in its present form.

As an advocate in the law courts I have naturally taken great interest in all that appertains to the welfare of the legal profession and the maintenance of its proper standards. For many years I was an examiner in law of the Allahabad University. In 1918 and 1919 I was appointed for short periods a temporary lecturer in the Allahabad Law School, and ever since that time my contacts with the law students at Allahabad have been close, so also with the members of the profession, not only at the Allahabad High Court and the old Lucknow Chief Court, but also in the district courts of the U. P. The conditions in the profession must be the care and concern of every member, particularly of the senior members. It is a matter of frequent comment that the profession is overcrowded. This is not a recent development. I heard of this overcrowdedness myself when I joined the Kanpur Bar in 1908. Even then there was plenty of brieflessness visible. During the last 40 years with the increase of population and the spread of education and until recently want of careers, numbers have considerably increased. One feature peculiar, I imagine, to India is that practically all those who read for and obtain a law degree either practise in the courts or enter the judicial service, though it is true that under the stress of circumstances many law graduates nowadays seek employment outside the judicial service also. The number of law students in every law school in India is increasing year by year, and the consequence is that the profession cannot properly absorb all the aspirants. This aspect of the problem has been

constantly engaging my attention, and I have ventured frequently to advise both the law students and the junior members of the profession upon it.

Again I have often been asked about the secret of success in the profession, what and where is the key which unlocks the door to professional eminence? This question, so easy to put, is as difficult to answer. Advocates in every generation and in every province in India have won renown for themselves as great cross-examiners and as skilled and most persuasive in forensic debates, particularly in courts of appeal. Names of many have become legends in different parts of India. It is, however, our misfortune that not even one has left any account of his own life at the Bar or his own reminiscences which would prove instructive and profitable to the succeeding generations. In England and, to some extent, in America such literature is available. Lives of Lord Chancellors and of Lord Chief Justices, and memoirs of great advocates are wonderful reading, but experience has led me to the conclusion that while there are well-known sound general admonitions addressed to those who aspire to success and fame in the profession, there is no royal road to success, and one must discover for himself, in the light of his own temperament and attainments, how he should reach the summit of his ambitions. And when it comes to setting out this kind of advice in writing, one has to fall back on his own experiences, and upon the methods that he devised and pursued for himself. These accounts therefore tend to become so personal, but it cannot be helped. The law students and young advocates must overlook this seemingly objectionable feature of such narratives, read them as interesting material and endeavour to pick out of them points which appeal to them as adaptable to themselves with all their own merits and deficiencies. The essence of advocacy

and its sole object lies in its persuasiveness, and to make it as persuasive as he can, the skilled advocate calls to his aid everything that he can possibly employ, even his histrionic talents and attitudes, the modulation of his voice, the uplifting of the eyebrows, the twinkle of the eye, gestures by his hands and what not. One who possesses a musical, melodious voice starts with an initial advantage in his favour. This is, of course, apart from the legal learning of the argument, its forcefulness and its arrangement and its delivery. Every advocate possesses an individuality of his own, and he has to make the best of that individuality and mark out a path for himself in his own career, profiting as much as he possibly can by the mistakes and experiences of those who have gone before him.

During the last 15 years I have spoken frequently to the law students and beginners in the profession on this particular matter, and lately have also written upon it. For my own diversion I have also reduced to writing accounts of some cases to exemplify a particular method of presentation of a case. In perfecting that method I have been greatly assisted by my close study from my student days of Conan Doyle's Sherlock Holmes stories, that immortal detective of fiction, now to tens of millions all over the world a living personality, who was a great expounder of most valuable rules for unravelling mysteries. He always insisted upon close observation of detail and proper inferences therefrom, and those rules I found invaluable and indeed key to success in many mysterious cases which I was briefed to argue in courts of appeal.

Mr. Justice Banerjee, having read some of these narratives, thought that they would be useful to law students and should be collected together in book form. I have acceded to his wishes, and this book contains some which have already been printed in newspapers or for private



circulation, and some which have not yet been published anywhere.

The individuality of every advocate, indeed of every human being, is always greatly influenced by the environment in which he grows up. The parents by their own life and their conduct mould materially the lives of their children. From this point of view I think it is desirable that readers should know something about the parents of those whose reminiscences they are invited to read. Much that might appear inscrutable in a man's conduct may be traced back to his upbringing or to the examples set before him by his parents and guardians. I have therefore included in this book a short article which I wrote some time back on my father. His was in many respects a remarkable life and much of my success is due to what I learnt from him and his example.

The first real brief is in the life of every advocate in retrospect a rather mysterious and mystifying experience. No one can really recall or explain how it happened. I have had the good fortune of having in my early youthful days several such mysterious happenings. They played a great part in my professional life. I contacted many people whose acquaintance was to me a liberal education in the workings of the human mind and how essentially good human nature is, I am sure that their acquaintance will prove equally interesting and source of encouragement to my young friends of the present generation. The chapter describing "Old Friends and Old Memories" contains also some reflections on the future of the legal profession in Free India. I should like to draw special attention to it.

I practised for six years at Kanpur (1908-14) and shifted over to the Allahabad High Court Bar in 1914. I had been vacillating a great deal during the last three years of my practice at Kanpur and when I passed the Master of Laws



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Examination from the Allahabad University in 1913, Dr. Tej Bahadur Sapru became quite insistent that I must forthwith join the High Court Bar because he thought (and said so) that it was quite ridiculous for a Master of Laws (and prospective Doctor of Laws) to practise in a District Court. Any way, his advice revolutionised my life.

The Allahabad High Court Bar has produced a galaxy of talents. I had the good fortune of working and knowing intimately many of them and about some I have written briefly. I hope that a discussion of the strong points of many of these eminent leaders of the Bar would be found instructive by my readers.

The number of detective stories in literature is legion. But for me there has been only one detective in the world, and none else, and that is the great Sherlock Holmes. I wonder whether any advocate of his time deliberately tried to bring Sherlock Holmes into a court of law in India. I did so very frequently to the great advantage of my clients and Sherlock Holmes definitely saved on many occasions a great deal of public time. How he assisted and guided me and came to the rescue of many, guilty or innocent God only knows, is related in several stories included here.

Finally, one cannot take the art of persuasion and deal with it in the abstract. We have always to persuade human beings either in the mass or in isolation. In the first category fall public meetings and conferences and Legislative Assemblies. Of the second, a judge is a great example and judges while they are all like each other in their determination to mete out justice with the utmost impartiality and to the best of their ability, differ from each other in an extraordinary manner in their attitudes and aptitudes and in their approach to a particular problem. The art of advocacy lies in sizing up your judge as accurately as you can and then to reach his head and his heart by following the line of



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least resistance. Of the vagaries of judicial minds and divergence of judicial opinion there are some good examples in this book.

October 6, 1951.

K. N. KATJU.



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THE STORY OF MY FATHER, PANDIT TRIBHUWAN NATH KATJU*

THIS IS THE STORY of my father. I wrote the story of my mother some years ago and the readers liked it. She was in many ways a remarkable woman. So was my father and his story may be found equally interesting. It is not the story of a highly educated man with any academic distinctions. Nor did he distinguish himself in any way by amassing any great wealth. It is however the story of one who struggled greatly against adverse circumstances, and was entirely self-educated; who by his integrity of mind and a sense of honour which would not brook the slightest insult or stain, led a long life with the utmost purity and was in his own life-time greatly loved and honoured for his solicitude and affection for all he knew, and who, when he died, was widely mourned in his native town as no one had been mourned there for centuries.

My father was an adopted child and the story of his adoption is in itself rather remarkable as indicative of the close ties which often bind Hindu families together.

Bholanath Dar and Mansaram Katju were Kashmiri Pandits. They or their fathers before them migrated from Kashmir somewhere about 1775. The great highway for Kashmiri Pandit immigrants in those days was through Lahore to Delhi, and from Delhi began the great bifurcation, some families coming east to the United Provinces and Bihar and Bengal, and some going west or southwest to Rajasthan and Central India (present Madhya Bharat).

* First published in 1950.

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Both Bholanath Dar and Mansaram Katju found their way *via* Delhi to Madhya Bharat. In 1818 was fought the fourth Marhatta War in which Maharaja Holkar was defeated by the British and had to cede large territories to the East India Company. One of his Commanders, a Pathan, Ghafur Khan by name, is said to have sided with the British and his Jagir which he held from Maharaja Holkar was, as a reward, confirmed to him by a provision in the Treaty of Mehedpur which followed this war. Ghafur Khan made a small town Jaora the capital of his newly acquired State. Mansaram Katju entered the service of Ghafur Khan shortly afterwards and the Jaora town has been the family home of the Katjus ever since. It is on the railway to Ajmer, 80 miles north of Indore.

A sister of Bholanath Dar was married to Mansaram Katju but they had no child of their own. Bholanath Dar had two sons, Badrinath and Jwalanath, and he gave Badrinath in adoption to his brother-in-law Mansaram.

Badrinath Katju was born in Delhi in 1815 and after his adoptive father's death he entered the service of the Jaora State and died in that service in 1875. His natural brother Jwalanath also spent his life in service in Jaora and died some years later. Both the brothers bought small adjacent houses in 1840 and 1844 and lived there with their families. Though Badrinath had, by adoption, become a cousin of Jwalanath yet Jaora being a small place the two brothers and their families continued to live in close amity.

Badrinath Katju had a daughter, but no son. This daughter had two sons, and one of them was adopted by her father Badrinath. This child unfortunately died some years afterwards to the great grief of Badrinath and his wife. The old lady was particularly heart-broken and though her relations advised her repeatedly that she and her husband should adopt another son to assuage her sorrow and

continue the family line, she persistently refused because she said that evidently she was not destined to have a son. I single her out rather than her husband because among Kashmiri Pandits in the domestic sphere women have always occupied a dominant role.

Jwalanath's wife had however plans of her own. She had a large family and when her third son was born in September, 1861 and was just eleven days old, she took the baby across to the other house and presented him to Badrinath's wife saying "here is your child" and walked away much to the amazement of the latter. She protested and refused the offer but there was nobody to listen to her: Jwalanath's wife had vanished. The tussle over the baby went on for nearly eight months, Badrinath's wife endeavouring repeatedly not to accept the gift, the mother equally resolutely declining to withdraw it. Ultimately the mother won and Badrinath's wife agreed to accept the child as hers. This was my father, named Tribhuwan Nath. That is the way how in olden days in Hindu families sisters-in-law often loved each other. Be it remembered that this was a pure gift of affection by one sister-in-law to another in no way influenced by any considerations of wealth or property because the Katjus had none.

Tribhuwan Nath as a child had little schooling. There was no English school then in Jaora. The custom was to employ a Maulvi who taught Urdu and Persian, that being the official language those days, and Tribhuwan Nath's education was confined to instruction by a Maulvi.

His adoptive father Badrinath occupied a rather responsible position in the Jaora State. The Political Department maintained a number of Political Agencies in charge of Political Agents to exercise general supervision over these small States. The Political Agent in charge of

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the Malwa Agency (which included Jaora) was stationed at Agar, 40 miles from Ujjain. Each State attached to the Agency was required to appoint a representative, called a Vakil, whose duty was to live at the Political Agent's headquarters and be the normal official channel for communication between the Political Agent and his State. The Vakils also formed a Board of Panches for settlement of inter-boundary disputes among the various States under the general supervision of the Political Agent. Badrinath was for many years the accredited Jaora Vakil for the Political Agency at Malwa, and was held in high esteem both by the Political Agent and the corps of other Vakils. His photograph shows him as rather a striking personality. It was at Agar therefore that Tribhuwan Nath acquired his learning. But it was not much, and soon a calamity overtook him. His father fell ill in 1874 when the boy was barely 13 years of age, but he was a precocious lad and with the concurrence, and I think, very likely on the initiative of the Political Agent himself, this young boy of 13 was appointed by the Nawab Sahib of Jaora to officiate in his father's place, and he continued to do so for a period of 8 months to everybody's satisfaction. One of my father's most precious papers was a certificate given to him by Col. Martin, the then Political Agent, in which Col. Martin testified to the energy and ability and the efficiency with which this young lad had discharged his responsible duties as a Vakil. Badrinath passed away in 1875 and my father was confirmed as a Vakil in his place. He was then exactly 13 years 9 months old. True it is that in many States in those days often appointments were made on a hereditary basis and went from father to son, but even then this was a most unusual case. Tribhuwan Nath, appointed in 1875, continued in State service for 70 years till his death in 1945. I think this is an absolutely unique record of



service for any man. Incidentally this early appointment was a source of constant reference and edification in the family circle. Often my father would remind me and my brother that while we were receiving education at college and were considered by every one as mere boys, or students, he had started life at the age of 13 years and 9 months and had commenced discharging the most onerous duties of a Vakil. Of course before such a prodigy we looked and felt always very humble and said so.

Out of these 70 years, fifty were years of active service. He held every kind of office in the State. He was a Magistrate, a Civil Judge, a Customs Officer, a Settlement Officer, a District Officer, Personal Assistant to the Minister and ended by holding a seat in the State Council as a Revenue Secretary, and by common consent he discharged the duties of every office with signal distinction. His natural intelligence was indeed great. His book learning was, in the circumstances, small but throughout his long life he continuously kept on adding to it. He acquired a good knowledge of Persian and his Urdu style was easy, literary and dignified. He had a very ready pen and was a great draftsman of scholarly minutes. His knowledge of general affairs was wide, and during all these seventy years, I think, he never missed his daily Urdu paper. He knew no English but the daily paper satisfied his great thirst for information of public affairs both at home in India and abroad. Such intense intellectual curiosity and avidity for information was only equalled by my mother. About 1925 when my younger brother took over as Revenue Secretary of the State my father was formally retired by the Nawab Sahib of Jaora on his full salary. He apparently became a free man but the relations between him and the Nawab Sahib, the Ruler of the State, were in a way so extraordinary that he was both in and out of service till his death. The

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Nawab Sahib, Iftikhar Ali Khan, was born in 1883 and was four years older than myself. The relations between the Nawab family and the Katju family were rather curious. There was official subordination no doubt but added thereto was a sense of family relationship also. In 1875 when my father entered the service of the State, Nawab Ismail Khan was on the Gaddi. He died in 1895 and his son, Iftikhar, succeeded him. During the minority of Iftikhar Ali Khan his uncle (mother's sister's husband) Yar Mohammad Khan acted both as Regent as well as a Minister. Iftikhar Ali Khan was invested with full powers in 1905 and commenced ruling on his own on the death of Yar Mohammad Khan two years later. My father had seen Iftikhar Ali Khan grow from a baby, had fondled him when he was a child and loved him greatly and this love was fully reciprocated by the Nawab who used to call himself my elder brother. I fully believe that had my father been ever put to a choice between me and Nawab Iftikhar Ali Khan, he would have readily sacrificed me for the sake of the Nawab Sahib : so deep was his personal devotion for the latter. And Nawab Iftikhar Ali Khan always treated him with the greatest respect. After Yar Mohammad Khan's death my father's importance and influence in State affairs rose immensely. His emoluments were also doubled from Rs. 150 to Rs. 300 a month, but apart from the salary the personal consideration and the care that the Nawab bestowed on father was indescribable. It is true that father had retired and was free to leave Jaora and used often to do so in the cold weather to visit me at Allahabad. But during his absence the Nawab felt uneasy and lonely and used to tell father " Panditji, so long as you remain in Jaora I feel happy and have a sense of great security, because I feel that I have at my elbow someone to advise me but when you are away, I feel miserable." And in



1936 when my father asked permission to pay me his customary cold weather visit the Nawab said "Panditji, of course, you may go but do please return soon, because I feel so unhappy in your absence." This remark of his touched my father so greatly that he resolved that he would never leave Jaora again and for the remaining nine years of his life he never did so. Not that he saw the Nawab Sahib daily. He would go to the Palace only once a week and sometimes not even that. But every morning a chaprasi used to come to enquire about father's health and reported to the Nawab Sahib personally how father was, and if father was ever indisposed then great was the Nawab's anxiety. There would be repeated enquiries in the day, his personal physician would come and so would he himself too. When father died in February, 1945, Nawab Sahib gave it out that he expected all condolence visits to be paid to him rather than to me, because he said that he was the eldest son of Panditji. They wrote to each other frequently and Nawab's letters to father breathed an air of filial respect and affection. Right to the end of his days whenever any important matter came up before the Nawab Sahib, or any important State document was to be drafted, father was called in for advice and assistance. Jaora State has now ceased to exist as a separate political entity. It forms part of the great Madhya Bharat Union; and it is well that both my father and Nawab Iftikhar Ali Khan did not live to see this consummation, because so deep was father's personal attachment to the Nawab and the State, that its disappearance would have made him sad indeed.

Nawab Iftikhar Ali Khan had, as an individual and as a Ruler, many failings, great and small, but he had one great redeeming virtue. He detested official corruption and one of the things, I fancy, which attracted the Nawab to my father so greatly was his trust in my father's

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incorruptibility. In those days when official corruption was not stigmatized by public opinion as something very reprehensible, my father's integrity of conduct and character shone like a star. In his own limited world, temptations were many and oft-recurring, but he stood like a rock of purity in disturbed waters. He once told me that to his infinite regret when he was very young, about 20 or 22 years old, he had accepted two small sums, I think, not exceeding Rs. 200 in the aggregate, from some suitor or other individual, but beyond that he had never touched a pice excepting his salary which for many years was small indeed, and he said that whenever he thought of that lapse on his part he hated himself and was grief-stricken. So strict was he on this point that even the use of official stationery—paper and pencils—for private purposes was unknown in our home. This impeccable probity gained for my father universal respect and reverence and he was fully conscious of it himself too. Among his many virtues, I fear, humility was not included. He was proud of his honesty and always held it up as an example to his colleagues and official subordinates and friends alike. This integrity added to his stature and his sense of self-respect considerably. He was exceedingly sensitive and when one day the Minister Yar Mohammad Khan wrote to him in a huff that he thought he was not receiving that assistance from my father which he expected, then and there without consideration of the consequences, father tendered his resignation saying proudly that he worked hard but if the Minister thought that he did not render the requisite assistance, his continuance in service was useless. This was on father's part a very daring act indeed because we were a large growing family and had his resignation been accepted he would have found himself in great difficulty. The Minister, however, had very likely forgotten with whom he was dealing and he at once recanted,



and in a very friendly and even brotherly letter gently rebuked my father for being so hypersensitive and there the matter ended. I have no doubt that by his example and precept for over half a century he kept not only his children but all those who came in contact with him and under his influence to the strait path of rectitude.

He had been denied opportunities and his activities were confined in a small State. Under more favourable circumstances with his massive intellect and force of character, he would have risen high and he thought so, and said so too. In the family circle and outside and in the Nawab's palace on every conceivable subject my father had something to say and he said it emphatically. He was like Dr. Johnson, impatient of contradiction. Nor would he suffer fools gladly and made it plain what he thought of them. His wide familiarity through his newspapers and periodicals with the march of events in the world made him confident of his own views and he seemed to lay down the law on all topics, be they matters of high State policy or anything else, important or unimportant, with an air of finality. Badrinath's premature death in 1875 had made him face the world all by himself from the early age of 14 and there being no elder brother in the family to exercise any check or restraint, he had grown self-reliant and assertive of his own individuality. He was prepared to set his hand to any work. He delighted in village planning. He supervised the construction of buildings, planted gardens and orchards, established dairy farms and seemed to know something of almost everything in the world. This characteristic produced rather singular repercussions in the immediate family circle between him and my mother, and his children.

He was married in 1868, at the age of seven, to a girl older than himself by over two years. And this girl

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developed into a woman who was, if anything, more intellectual than he was and had greater native intelligence and force of character. She also was self-educated and had much wider intellectual curiosity than her husband and greater zest for knowledge. My grandmother died when I was only 8 months old and thereafter the family consisted only of my parents and their growing family. My mother, like her husband, had no elder to guide or advise her in the family. I am afraid my father realised my mother's intellectual superiority and he was also conscious that he was not her match both in knowledge and in power of debate. Therefore he tried sometimes to browbeat her by exercise of the arbitrary authority supposed to be vested in a husband. As I grew up, I noticed how unhappy my mother sometimes became by the harshness of my father's language on occasions. Neither of them seemed to possess in those days the saving grace of humour. Both of them were always far too serious and if my father was ever in a lighter mood it may have been with his friends outside, but I never saw any evidence of it at home in my boyhood in the family circle. This absence of humour led to scenes and to frictions. Among other things, my mother was a strong believer in the divine right of woman to be completely equal to man in every respect. She did not concede that it was for the wife to obey and for the husband to command. She thought that the husband and wife were comrades in the great adventure of life. My father held opposite views and, conscious as he was that he was not equal in argument, he seemed to insist that when he so desired his word should prevail. My mother lost her father in 1895 and she was left only with her own home. In Hindu families a father's home lends a sense of security as well as self-respect to every woman. She feels that if unfairly treated she has somewhere to go to seek shelter.



But if that shelter is not available she feels a sense of helplessness, and then it becomes all the more important for a considerate husband to show to his wife all possible tenderness in word and deed and in behaviour. This my father, I am afraid, never appreciated. But somehow with all these temperamental differences my mother carried on, and she once confided to me the secret why she would reconcile herself to my father's occasional lack of consideration for her feelings. She said that what a wife can never forgive is her husband's unfaithfulness to her. On the other hand, if the husband is faithful, that covers a multitude of shortcomings in his wife's eyes. In that respect father was an ideal husband, with an irreproachable character and very abstemious habits. And my mother was the mistress of her home and all his salary came direct into her hands to be applied for household purposes as she thought fit. Whenever, she said, she felt hurt or aggrieved, she thought of all his good qualities and how fortunate she was; and that enabled her to make the necessary allowances in her husband's favour. I have said that these were merely temperamental differences leading to occasional outbursts, otherwise my father was a devoted husband. I may also add that when I started my law practice in the United Provinces in 1908, it had rather curious results both for my father and for my mother. My mother was then 50 years of age, and the very feeling that there was then another home of her own son where she could go as a matter of right infused in her a sense of greater independence. Passage of time also had made my father more mellow. But I think he also recognised definitely the change brought about by the establishment of another home in the family, and in his discussions with my mother he seemed always to bear in mind that he could no longer always have his own way.



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My parents' oppressive seriousness of mind in those years reacted to their children's great disadvantage. Neither was effusive by temperament. My mother was far too busy with her household affairs. She did her cooking, sewing and everything else and my father had his own routine. He would go to his office in the morning about 11 o'clock, return late in the evening about 6, have his meal and then after about half an hour would go again to the Minister's residence for social intercourse and club life and return after 11 o'clock when all the children had gone to bed. He spoke to us but seldom, and never unbent himself with us. At that time his philosophy of life evidently seemed to be that any display of affection towards his children was to be rigidly avoided. I had therefore almost a loveless life. In Hindu joint families young parents in those days used to be too shy to be demonstrative in public. That deficiency is made up by grand-parents who frequently even spoil the little ones in the family. Unluckily, I never knew what it was to have grand-parents at all and therefore in my boyhood and even later never experienced much caressing or warmth of paternal love. It was not that I was singled out for this misfortune. My younger brother and sisters experienced it too, but to a lesser degree. My elder sister and I shared the full blast of the icy coldness of our father, and we always held him greatly in awe. He seemed to us inaccessible. But as he advanced in middle age he mellowed considerably and, I think, the youngest child in the family, a daughter, born in 1899, was the luckiest of us all. However my father's suppressed paternal instincts seemed to overflow in a flood when on my marriage in 1905 my wife came into the family. She was then only fourteen years old, and from the very first day my father showered all his paternal affection upon her. He would buy her presents, he taught her Urdu and he talked and

played cards with her for hours, and I think he in his turn then learnt how to relax and smile and enjoy himself in the family circle. When she came into our family, according to the custom of the Kashmiri Pandits, she was given a new name and my parents called her Lakshmi Rani. My father had many grand-children, and he loved them all, but like Jesus who loved all his disciples but loved Peter most, my father loved the children of Lakshmi Rani most, and when they began to arrive from 1910 onwards, then it was a sight to see father playing with them, laughing with them: I envied them so. He loved Lakshmi Rani as only in Hindu families daughters-in-law are loved. She became dearer to him than his own daughters. And when she died in 1944 three months before him, it broke his heart and hastened his own end. He held her in high esteem for her wisdom, her gentleness, her tranquillity of mind, for the quiet efficiency with which she managed her home and her family and above all for the patience and fortitude with which she bore herself in sorrow and suffering. For us she was in truth a real Lakshmi, because she brought with her happiness and good fortune. But I am digressing; this is not her story.

My breakaway from home in Jaora was not of my father's design. We had roots in the place and nowhere else. He was anxious that I should follow my ancestors' footsteps and serve the State. So when I passed my law examination in 1907 he wrote to the Minister (without my knowledge) offering me for State service. But the Minister did not display any great enthusiasm about it. He told father: "Kailas Nath is still young (I was then less than 20 years old) and he had better get some experience somewhere before his appointment to any office in the State." This annoyed my father greatly, and disappointed him too, and he wrote back in reply that it was for the

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Minister to decide, but he must add that just as when a young bird flies out of the nest for the first time seldom does it, if ever, return to it, similarly if I once got out of Jaora, there was no saying whether I would ever willingly come back again. This diplomatic hint did not move the Minister in any way and I had to seek my fortune in the wide world, because for me every place under the sun outside Jaora was equally distant, equally attractive. By barest accident I chose Kanpur for starting my law practice and as my father apprehended, so it happened. I never got back to the nest again.

This additional home at Kanpur and subsequently at Allahabad widened father's horizons also considerably. Not that his attachment to Jaora was in any way lessened, but he liked the prospect of spending some months in the cold weather in the United Provinces with us. He led with me a rather easy life. But so strong was his sense of independence and his anxiety not to be a burden on others that he took immense care to be of the utmost use while he stayed with us. He would build houses, supervise repairs, lay out gardens and benefit me and my family by his invaluable care, advice and guidance. But ultimately he could not adjust himself to the new environment. He was of the old school and was not much in sympathy with the rising tide of democracy and a democratic attitude of mind. He did not think much of the intelligence, and political wisdom and experience of the common man, and he believed stoutly in doing good to others rather than letting them alone to do it themselves. He was of the opinion that he was far better equipped to decide what was good for them. He had acted on that principle for fifty years in the Jaora State doing all manner of good things, but doing it himself through State agency. But when he came to Allahabad he found himself in the city of Pandit



Motilal Nehru and Madan Mohan Malaviya, a lone figure, and his want of acquaintance with the English language also proved a hindrance, and then there was in him a sense of pride; in him, as my mother used to say, the "Rajo Guna" was the ruling instinct and he was not prepared to sink his own individuality and take so to say, to meditation or restful life. He wanted incessant action, something to do himself. Though whenever he came to Allahabad he gathered a number of people round him, who admired him and liked him immensely, he thought always that, do what he would, he would ever be known in Allahabad as Dr. Katju's father, and this position he was not prepared to accept. In Jaora it was exactly the reverse. He was revered there for himself in his own person, and there was no important family in the State, high or low, whom he had not known and befriended for generations, and to every one he was the "Panditji." And there in Jaora as long as he lived, no matter what my standing might be in the legal profession or in public life, I was only Panditji's elder son, and in that description I gloried. I loved to be that and nothing else in Jaora. So ultimately after 1936, as I have already said, partly out of consideration for Nawab Iftikhar Ali Khan and partly for this unexpressed reason of his own, he never left Jaora. In this matter my mother took a different line. The old lady had different views altogether. My father and she had travelled extensively throughout India on tours of pilgrimage and she had become devoted to the Triveni at Prayag, and with failing eye-sight and advancing age, she said she had discharged her duties sufficiently by her husband and would no longer leave the banks of the Triveni, and there she died in 1939. My father survived her nearly six years.

In Jaora in his closing years my father had become an

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institution. All people, of every class, of all communities, took pride in him and looked up to him as a sage, counsellor and trusted friend. Everywhere he was welcomed. He had numerous adopted daughters, both Hindus and Muslims, and the number of his grand and great grand-children by practical adoption was galore. Everybody came to see him and pay him respects, peasants from the villages and residents of the town alike. My younger brother was all along with him but father led a life of his own with an old servant who was not only a servant but had become dear as a member of the family; and for his service father not only took care of him but of his wife and children too. Youngsters used to come to play with him. For his natural brothers' children and grand-children he had warm affection and they all respected him as the eldest of the family and their dearest well-wisher. To them and to other relations Jaora became a place of pilgrimage and such was his largeness of heart that to everyone who came he gave something priceless of his wisdom and of his experience. In his declining years three obsessions almost possessed him. The first was that he should remain independent and not be under obligation to anybody in the world, not even to his own children. He wanted to give something to everybody and take nothing from any one. The second was his intense desire that up to the day of his death he should be physically fit to look after himself and, again, be under no obligation to anybody for care and nursing. And the third was his passionate longing to die at Jaora in his own ancestral home. He once pointed out to me the small *kutchra* room where he was born and he said wistfully, "How can I leave this place in my old age? Here are my roots." And these three cherished desires were fulfilled. He was getting his pension of Rs. 300 a month and as we, his children, had settled down in life, he was



free from all family responsibilities and with his salary and his other savings he was always a benefactor and took delight in giving, and many poor families were recipients of allowances from him. As for his health, I have known no one take such punctilious care of it. He followed a strict regimen, took a measured diet, measured exercise, measured sleep and to ensure that he was keeping a steady weight he would weigh himself regularly on the first day of every month and keep a record of it, and if there was the slightest deviation he would take care to correct it. For every organ, his ears, his eyes, his mouth, and his teeth and his joints, there was some sort of home-made medicine—drops or oils—which he regularly used. I sometimes used to twit him on this excessive "Sharir-Raksha" (body care) to which he would reply that I did not know what a great treasure good health was. The result was that even at the age of 84 he had all his teeth, his eye-sight was good and he could write about 32 lines on a post-card. He was wedded to the old ways of living and after my mother's death cooked his own food, and did not eat any food cooked by anybody else. This longing of his to be in good health till his death was fulfilled. In February 1945, seemingly in perfect health, after breakfast he suddenly got a stroke which made him unconscious. He never regained consciousness and passed away after five days. Thus he, in his conscious state, never became dependent on any other individual for his physical well-being. I was then away arguing a case in the Lahore High Court. On reaching home I asked the doctor about the prognosis of the case, and he replied that he could say nothing with certainty. Even if Panditji regained consciousness, he might not be able to move his limbs. Thereupon I told him that I would not wish for such a recovery because such a life would be a living death to him.



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On the 26th February, 1945 near about midnight the end came. But just before it came, I do not know how, he opened his eyes widely in the normal manner and seemed deliberately to look at all of us assembled there round him and to bid us farewell, and then he passed away. The people of Jaora mourned his loss as if it was not I alone who had lost my father, but every one of them had lost his father too. All the State troops, the police, the members of the Nawab's family and people of all communities, an enormous multitude, followed the funeral procession. Panditji was dead and all felt that a great era had closed for ever.

Every child in the world owes much to his parents. I owe this additional debt that the money which my father spent on educating me he had earned honestly, every rupee of it, by honest hard work. I realise now—I did not realise it at the time—what my education in Lahore and Allahabad had cost my parents in comfort and sacrifice. For them it was an ambitious thing. There was no previous example in the family to guide them. They did not grudge themselves even privation so that I might receive the highest education and I verily believe that whatever success I may have gained in life is solely due to the untainted source of my father's earnings. When I appeared in 1912 in the Master of Laws Examination and failed, I thought that my failure was solely due to the fact that the examination fee had come out of my own pocket. Therefore, when I sat for the examination again next year I particularly requested my father to send me Rs. 100 for the examination fee so that I might truthfully proclaim that my father had borne the expense of my education right up to the very end. He did so and I passed. He was like a banyan tree sheltering us all till the day of his death, and two of the pictures we have of him as the head of four generations in the male and



the female line, will for ever remind us of the blessings that we had always received from him in such abundance. He has left us the priceless heritage of a noble example of a life well-lived in the service of his fellow-beings.

2

HOW I BEGAN MY LIFE AT THE BAR*

I READ IN THE SCHOOL at Jaora in Madhya Bharat up to March 1900, and then had a serious illness for several months, and in October 1900 my father acceded to my request to send me to my mother's people at Lahore to enable me to appear in the next Matriculation examination of the Panjab University to be held in March 1901. I had come only for six months, but stayed $4\frac{1}{2}$ years and graduated from the Forman Christian College at Lahore in March 1905. Till 1903 I had not the remotest intention of taking to a legal career. As a matter of fact if I had been left to myself I would have become a doctor of medicine. In those days admission to the Lahore Medical College was open to young men who had taken the Intermediate diploma, and along with some class-fellows I thought of joining the Medical College in July 1903. But father was not agreeable. He consulted a family friend at Jaora, in whose judgment he confided, and was advised that another two years at an Arts College would be useful in making me acquire greater proficiency in the English language, and mastery of English language, this friend thought, was desirable for an Indian medical man. So my father asked me to take my B.A. degree first. This I did in 1905. By that time the charm of a medical career had rather faded out of my mind and in its place there arose a subdued, inarticulate desire to qualify for a law degree. This had its origin in a rather curious incident. In 1904 one morning we had a visit in the college by the members of the University Royal Com-

* This article forms part of a book still in manuscript, which I wrote in prison in 1941.

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mission. One of the members of the Commission was Sir Gooroodass Banerjee, an eminent lawyer, then a judge of the Calcutta High Court. The newspapers published the Letters Patent by which the Commission was appointed, and therein Gooroodass Banerjee was described as "Our trusty and well-beloved Gooroodass Banerjee, Master of Arts, Doctor of Laws." I was almost fascinated by the sound of these academic distinctions and resolved in my mind that I would also be one day a "Master of Arts, Doctor of Laws" (I was a mere lad 16 years old at the time) and that ambition subconsciously spurred me on till I achieved my ambition. (I record this as an example of the effect produced by an apparently trivial incident.) Accordingly when my father proposed that I should proceed to Allahabad for my legal education, I readily complied with his wishes.

The system of legal education then in force in the United Provinces (present Uttar Pradesh) was, from every point of view, far from satisfactory. The Allahabad University—the only University then in the Province—was not a teaching institution. It was a mere examining body, and prescribed standards and courses for various examinations and degrees. Legal instruction was imparted in the law classes attached to some of the leading colleges in the Province, such as the Muir Central College at Allahabad, the Canning College at Lucknow and the Agra College at Agra. These law classes were considered by the college authorities as extra sources of revenue for the general administration of the college. The lecturers were drawn from the practising members of the bar and were poorly paid. The staff at Allahabad consisted of a Professor on Rs. 400 a month, and two lecturers on Rs. 150 a month. The Professor and the two lecturers were part-time employees and used to deliver lectures thrice a week. The Professor took his class early in the morning throughout the year, and

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the two lecturers in the evening. This was unavoidable as they had their own work to do in courts in the day. In Allahabad the holidays were long. There was the usual summer vacation of over two months and a half in the hot weather and in addition there were no lectures for 10 weeks from August to October when the High Court was closed for its Long Vacation. Thus the students of law had a very easy time of it. There was no tutorial instruction, no terminal or House examinations. One could sit straight off for the LL.B. examination after attending the prescribed number of lectures in a recognised institution. Actual attendance at lectures depended upon the whim and pleasure of the students concerned, and was in practice in the case of a great majority, a mere farce. Students would generally smuggle into the class room just to answer to their names at the roll call by the lecturer and then disappear. And it was not difficult to persuade a friend of yours to answer to your name in your absence. This was, in practice, frequently done, and one might even be away from Allahabad for weeks and months and yet have his presence regularly marked in the registers at Allahabad. This was possible because the classes were large and unwieldy, and personal contact between the students and their so-called teachers was absolutely nil. The lecturers, moreover, I am afraid, were fully aware of the prevalent practices and wilfully turned a blind eye to them. I have known even of cases where the lecturer, at the fag end of the term, listened indulgently to the request of a student and converted his "absences" into "presences" for a number of days or weeks to enable him to make good the shortage in lectures and reach the prescribed total. And I cannot say that the students lost much by not attending the lectures. The method then generally in vogue (there were exceptions—Dr. Sapru was one of the exceptions) was for the lecturer



to dictate notes on the subject on which he was supposed to lecture. There was no attempt made at oral explanations or elucidations, and any interjections on the part of students were neither frequent nor encouraged. The so-called lectures were thus reduced to mere mechanical dictation for about 45-50 minutes at a time. These notes were not very illuminating, and at any rate were in no way superior to the numerous "guides" and "aids" and other cribs easily available to students in printed form. I confess I never read or studied the notes which I so laboriously took down in the class room. And after all, if one was so minded, nothing was easier than copying those notes later comfortably seated in your study. The general College library contained a law section but was poorly patronised by students, and during my two years at College I never heard my lecturer recommending the study of any particular legal text book or precedent. The students had usually engagements of their own in the day-time. Some of them were in service, others were also reading for their M.A. degrees. But in spite of all shortcomings in their instruction, they did fairly well in law examinations, and the percentage of successful candidates was high. The reason was not far to seek. Law examination was a professional examination and opened the door to a career. The students were all young men, mostly married, and already burdened with families, anxious to stand on their own legs and to earn their own living. Therefore as the examinations approached everybody concentrated on all kinds of "cribs" and "aids" and endeavoured to muster through, no matter how poor his grounding in legal principles, and how meagre his reading of those classics which are the very life-blood of our law. Life at the bar, however, is a continuous series of examinations almost from day to day, and week to week, and a good lawyer continues to learn till the end of his life, at someone



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else's expense no doubt. It is a matter for reflection that legal education was in those days so poorly organised not only in India, but in England also where the prevailing conditions regarding eating dinners were notorious.*

I passed my Vakil High Court examination in March, 1907, and took my LL.B. degree from the Allahabad University 6 months later.

The choice of a career, always so difficult for a young man, was for me a question of exceptional difficulty. My parents had stinted themselves greatly indeed by sending me to Lahore and Allahabad. I knew what a burden my education, and particularly my two years' residence in Allahabad, had been on my father's resources. And it was quite impossible that I should continue to be an encumbrance on him any longer. I had returned home and looked about for a job in some Indian State. There was none open to me, and my applications met with no response.

Service in British India was wholly out of question. I possessed neither outstanding merit nor any influence. And practice of the legal profession was not for me an easy matter. I had to select a suitable place. At first sight all districts of the United Provinces seemed equally suitable because I was a complete stranger to all of them, and had no relations of any kind anywhere. So I could look with an absolutely impartial eye on every town in the United Provinces and no preferences troubled me. While I was thus passing idle months at home in a state of acute suspense and perplexity, providence in the shape of Pandit Pirthi Nath came to my rescue.

Pandit Pirthi Nath was the leader of the District bar at Kanpur. That was not all, he was in fact the uncrowned

* Present-day Law College at Allahabad with a large whole-time staff, day classes and a splendid library is an enormous improvement on the old state of affairs.

King of Kanpur, universally loved and respected by every section of the community. His was a unique commanding personality. A lawyer of singular acumen and industry, and wide grasp of legal principles, he was known and feared all over the Province as the greatest cross-examiner of his time. One British Judge publicly said that if he was ever implicated on a murder charge he would entrust his life into the hands of Pandit Pirthi Nath. He was a perfect terror to all malefactors, evil-doers, and false witnesses, and, like Sir Charles Russell, he overshadowed and overwhelmed everybody in the law courts, the Judge, the parties, witness, counsel. All succumbed to the infinite grace and charm and wit of that moving figure, with the gleaming penetrating eyes, looking at you so intently as if they would pierce to the innermost recesses of your soul and wrest your deepest secrets from you. He knew not what fear was, and he was, like Erskine, fearless in his advocacy, unmindful of his own personal interests, favour or frown of authority in the discharge of his duty to his client.* Though a mere pleader of the District Courts, the lowest rung in the professional hierarchy in the civil courts, he was by unanimous consent the beloved President of the Kanpur Bar Association which included a large number of Barristers, British and Indian alike, Advocates and Vakils and Pleaders. His supremacy was unchallenged and unchallengeable and I think he made the greatest income that has ever been made, or will be made at the bar in the District Courts. Outside the Courts he wielded wide influence in the public and social life of Kanpur. No good cause ever appealed to him in vain, and he was actively interested in almost every public institution

* To an English Judge who used to shout and interrupt counsel unnecessarily he once said in a voice of thunder: "Listen to me. It is your duty to listen. It is my privilege to speak and you are paid to listen." The Judge was overwhelmed, at once calmed down and apologised.

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of Kanpur. Princely in his income, he was equally princely in his generosity, and unbounded and unostentatious was he in his charity. His right hand knew not what his left hand gave. His was a spotless character, a man of the highest integrity, straight and upright, and withal, gentle and tender-hearted, and when I came in contact with him, of extremely simple habits. My good fortune now threw me under his care.

I met Pandit Pirthi Nath for the first time in July, 1907 after I had passed my Vakil examination. He was, like myself, a Kashmiri Brahmin, but not related to me in any way. I had gone to Kanpur to meet my cousin, a student at a local college, and I called on the local civil judge for whom I had a letter of introduction from a common friend. The Judge received me very courteously and politely inquired as to my future plans. I said I had made none so far. He then observed that he had fairly wide experience of the District bars in the United Provinces, and in his opinion Pandit Pirthi Nath was the person most competent to initiate a beginner into the mysteries of the profession, and he strongly advised me to see the Pandit "now that I was in Kanpur." I did, and was kindly received. Pandit Pirthi Nath had heard of my name before. I repeated to him the judge's observation, he smiled, and said he would willingly take me in his chambers if I decided to come to Kanpur. This was at the time purely casual talk. Kanpur was a big city, and living there was expensive, and for me, a total stranger, with extremely meagre resources, to start life there was a very serious proposition.

But months dragged on in idle waiting at home. I floated in seas of doubt and anxiety with no land in sight anywhere, and I made up my mind to take the plunge. And in January, 1908, when I was 20½ years of age, I wrote to Pandit Pirthi Nath, reminded him of my interview with him six months earlier, and enquired whether I should come

to Kanpur. By return mail I had his two-line letter—he was always brief in his letters—saying “Do, I shall be happy to assist you.” This letter cut the gordian knot of all my difficulties for me. And with exactly Rs. 52-8 annas in my pockets I left home in February, 1908 for Kanpur and started upon the great adventure of life. The die was cast, the Rubicon crossed. By the grace of God I never had any cause to regret that decision.

* * * *

District bars in British India are not merely like County bars in England. Indian District bars play a far more vital part in the life of the community. They discharge extremely important functions and duties, and handle cases, civil and criminal, of all kinds and complexity. These bars afford ample field and opportunity to competent and experienced advocates, and have always attracted to their ranks lawyers of great ability and forensic skill. Each District bar has in every generation included several practitioners of merit and real talent.*

Members of the legal profession in the districts in those days occupied a high position in public estimation. They were the leaders of public opinion. The national movement, fully developed as it is today (1942), was forty years ago still in its early stages. Direct action and passive resistance in India was not then even thought of, at any rate, was not considered practical politics, and practising lawyers made admirable arm-chair politicians, and were great masters of the art of constitutional agitation. Politics were confined to urban areas, and there the lawyers reigned supreme. They dominated all public activities. They organised and

* I may add that in India, outside Calcutta and Bombay, every advocate is his own attorney and sees and receives instructions direct from the client, and the profession is not divided into two branches as in England.

managed philanthropic and educational institutions and charitable societies. Socially the membership of the profession conferred status and dignity. Bar was crowded even in those days, but not so uncomfortably and overwhelmingly crowded as it is now, and everywhere a lawyer as such was welcomed as an honoured guest or visitor and received with great consideration and courtesy. And only lawyers could, on occasions, stand up to the bureaucracy of the day, the local tyrants, dressed in brief little authority in the districts, and were in turn cordially hated by them. The *bête noire* of the British civilians of those days in India was the *Vakil-Raj* and the Anglo-Indian literature of the period is full of denunciation of Indian lawyer-politicians.

When I joined the Kanpur bar in 1908 it was by common consent the strongest District bar in the province. Kanpur has long been the industrial centre of the United Provinces, and it is the largest city in the province. A wealthy and thriving commercial community with ever-expanding industrial concerns sustained and nourished a flourishing bar. It was a crowded bar and everybody was not a member of the Bar Association. With the exception, however, of a few luckless people, every member of the Association had some work to do. *Esprit de corps* between the members of the Bar Association was excellent and under the leadership of Pandit Pirthi Nath relations between Bench and Bar were good and cordial based upon mutual respect and courtesy.

To this band of brothers I soon became familiar as a junior and protege of Pandit Pirthi Nath. That fact itself gave me some status and standing in the eyes of the members of the Association. Every one, was kind to the newcomer, very youthful in appearance but seemingly assiduous in his habits and in application to his work.

I commenced my practice by indulging in a bit of innocent, and I think permissible, self-advertisement. At



the suggestion of a friend I wrote an article on a legal topic 'Forfeiture of Deposit' which was published in the *Allahabad Law Journal* early in June, 1908. It attracted commendatory notice of members of the Kanpur bar, and I was singled out as a well-read beginner with a taste for legal scholarship.*

Pandit Pirthi Nath was then conducting a heavy civil case at Hardoi in Avadh. I accompanied him there as his "devil" and stayed there 15 days. There was no money in the case for me, but instruction of immeasurable value. It was my first case with witnesses and listening to examination and cross-examination by masters in the craft was in itself a liberal education. The case raised a question of custom modifying the ordinary Hindu law of inheritance applicable to the parties. Pandit Pirthi Nath asked me to prepare a note for him, which I did. I do not know whether the note was of any value to him, but so far as I was concerned it enabled me to master that branch of the law for the rest of my life. An incident is worth recording. It gave me my first insight into the mainsprings of Indian litigation. The case was being fought with the greatest keenness, and at great expense to both parties, though the property involved was not of substantial value. The parties were near relations, uncles and nephews. Uncles, being the nearest in degree, claimed the entire estate of the deceased, while the nephews pleaded a family custom entitling them to inherit equally with the uncles. We appeared for the nephews, and the proof of custom necessitated the production of enormous evidence, oral and documentary, on both sides. Case, if fought to the bitter end, might well cripple both

* Subsequently I contributed frequently to the *Allahabad Law Journal*. Curiously enough in the course of my practice this question of forfeiture of deposit arose in numerous cases, and I always turned to my article for authorities. One of the cases was taken to the Privy Council see *Kunwar Charanjit Singh vs Har Swarup* (1926), 24 A.L.J. 248.



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parties. In my youthful wisdom I suggested a compromise to our clients. I still remember the pained and horrified look with which I was met. "Compromise," my client told me, "compromise, you talk of compromise. *This is not land, these are the bones of our ancestors*, how can I think of compromise and relinquishment of my claim." Thus I realised for the first time the unbreakable hoops of steel which bind a man to his ancestral land in India. The truth and ever-abiding force of this sentiment have struck me again and again in the course of a long professional career.

The first brief is an unforgettable experience. Mine was a trifle amusing too. At the instance of Pandit Pirthi Nath one of his clients instructed me for a fee of Rs. 15 to apply for an attachment before judgment. The case was a perfectly simple one, and the order was to issue as of course. I drafted the application with care, and presented it in Court. The judge looked up expectantly, hoping to be told what it was all about. But I found myself tongue-tied and could not utter a single word. The judge looked at the shy, bashful youth before him, smiled encouragingly, read the petition, and made the order prayed for. The second experience was a little bitter. This was my own case, without the intervention of Pandit Pirthi Nath, a criminal appeal of a poor man who had been fined by a magistrate for a petty assault. Fee was Rs. 5. But to me the amount of the fee was no consideration at all. It was the case that mattered. How I prepared it, how I considered every aspect of it, how I rehearsed the whole argument in my own mind over and over again, going minutely into the numerous points that I thought arose in the case. But the District Magistrate who heard the appeal was, so it appeared to me, quite cold and hard and unsympathetic. The infinite injustice of which my client was the victim seemed not to touch him at all. He read the judgment, looked at me,



I spoke, and incidentally forgot nine-tenths of what I had intended to say, stopped abruptly, and the appeal was then and there dismissed. I was unhappy that day but the client didn't seem to mind it very much. In fact, he was quite jolly about it. He met me afterwards twenty-five years later and preened himself so on having offered me my first real brief.

This was, however, a passing phase and I soon found myself quick at repartee, cool and collected in court, rather gay, vivacious and lively, sometimes frivolous, always inclined to relieve the tedium of the argument by a little honest hilarity. My seniors, judges and advocates, ascribed my witticism and my frivolity to youthful exuberance of spirits, and smiled and laughed indulgently. They liked me nevertheless for my industrious habits, and the mastery of my brief.

My first brief outside Kanpur was in a reference before private arbitrators at Mirzapur where I was opposed by a Barrister member of our Association, Mr. Arrindel by name. I much enjoyed my visit to this beautiful town on the banks of the Ganga, and my fee (Rs. 32) was to me a large sum indeed. Soon in the rains I had my first experience of a case in camp. In India magistrates are also revenue officers and do a lot of administrative work in the areas under their immediate charge. Senior civilians, as Commissioners of Divisions comprising several districts, exercise general administrative control and supervision and also function as judicial appellate authorities in rent and revenue litigation between landlords and tenants. These officers are constantly touring about in their districts and divisions, particularly in the cold weather and in the rainy season. They travel and tour in comfort, riding, living under canvas in fine camping grounds, all at public expense, enjoying at the same time much hospitality from landed gentry in the neighbourhood.

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They have altogether a fine happy time in camp. Officers are away from headquarters for weeks on end. In those days they would also transact judicial business in camp. It was no trouble to them. They had their subordinate clerical staff in attendance as a part of their camp entourage. These minions of authority, clerks and ushers, enjoyed camp life too. They got their travelling allowances but lived mostly on the countryside, fleecing everybody who came within their reach. But cases in camp were ruinous to the parties and most inconvenient to all concerned, witnesses and lawyers. The camp may be miles away from anywhere, under a grove of mango trees with no accommodation or place of rest for litigants within reach. People would congregate under trees waiting for their cases to be called on. Surroundings were sylvan no doubt but rather inconvenient. And there were no fixed hours. Officers would take up judicial work whenever they liked or were free to do so. I had a case once taken up at 9 o'clock at night. This system was so obnoxious that as soon as public opinion became a little more articulate and forceful, Government were compelled to discontinue it, and now as a general rule all judicial business is done and cases disposed of at headquarters in the normal manner. But in 1908 the practice was widely prevalent. Mine was a rent appeal before a Commissioner. The camp was fortunately within two miles of a railway station not far from the roadside. Railway timings being convenient, I rather enjoyed this my first experience of a case in camp, as it provided both an outing in the country from the smelly, smoke-laden atmosphere of Kanpur and, to me, an attractive fee (Rs. 32). I had another novel experience, the supercilious attitude of an old crusty, worn-out British bureaucrat, to whom a lawyer was anathema; a man of the old school who thoroughly believed in the primitive parental (*ma bap*) form of administration, superiority complex, resolute Government.



and no d—d nonsense. This man took it as the height of impertinence for any Indian to speak English before him. Now British judicial officers generally liked being addressed in English. It enabled them to dispose of their work expeditiously. But this gentleman had different notions of his own dignity. His knowledge of the Indian languages was not profound, but what did it matter? A "native" must not address him as if on an equal footing in a civilised language. He must talk his own *patois*. It may seem rather curious that an Indian should complain of being compelled to address the Court in his own language, but here the underlying motive was contemptuous—and contemptible. Moreover, to Indian law graduates fresh from the University, where instruction was imparted in English from English text books, where all statutes were enacted and all law reports were in the English language, that language came more pat on the tongue for the expression of legal ideas in suitable legal phraseology. However, there was no help for it. Mine was the third case on the list. Instead of sitting under a tree and waiting for my case to be called, I went over and watched the hearing of the earlier cases, and then I came to know of the Commissioner's singular views and idiosyncrasies. When my turn came I addressed the Court in Urdu, but coming to a technical expression (imperfect partition) and not hitting upon the Indian equivalent therefor at the moment unluckily used the English phrase. The Commissioner at once pulled me up: "Imperfect partition *nahin samajhte*" (I don't understand imperfect partition). Thereupon I translated it and argument proceeded without any further hitch. I narrate this incident to illustrate a mentality on the part of English officers which was by no means rare in those days.

3

THE STORY OF MY FIRST REAL CLIENT*

THIS IS A STORY of 40 years ago and of my well-beloved first real client, Thakur Bachchi Singh. Its telling will involve plenty of self-praise, but the narrative shall be truthful regardless of all risks of possible misunderstandings and I will not allow it to become drab or colourless or to suffer in any way by any undue shyness on my part.

I was then very young, very youthful in appearance and very bashful in general company and a baby twelve months old in the Kanpur law courts where I had started on my own, in a rented house situated in a very unprepossessing, mean-looking, small lane. I could not afford to furnish my working room with tables and chairs and the other usual paraphernalia, and had adopted the old Indian style. My office furniture consisted entirely of a *durree*, a cotton carpet (a gift of my father) and a big pillow. One morning I was sitting cross-legged on my carpet when in walked unannounced, without any formality, a wild-eyed, crazy-looking old man, semi-naked, in tattered clothes and a very short *dhoti* indeed. He sat down, stared at me and at my surroundings and then suddenly burst forth: "You do everybody's cases; won't you do mine?" I was taken aback and before I could muster my wits to say anything to him, he brought out of a small bundle under his arms two tin cylinders in which the villagers in the United Provinces generally keep their papers as a safeguard against fire and rain and damp and whiteants. He uncovered the lid of those two cylinders and took out two big rolls and throwing

* Gifted to and published by the Allahabad Secondary High School in 1950.

them before me, he burst forth again: "This is my case; do my case." I was literally fascinated, and instead of asking him verbally what the case was about—it was really impossible to talk with that old man in his then mood of frenzy—I lifted up the two rolls and began to unwind them. They were indeed very long, almost several yards long, and unaccustomed as I was at the time to the highly Persianised Urdu of the law courts of the United Provinces of the first half of the 19th century, I managed with some difficulty to make out that those two rolls purported to be copies of the proceedings of the District Judge's Court of Kanpur in the years 1847 and 1849. God has granted me a bent of mind for antiquities and everything ancient—say a 100 years old—rivets my attention on its own merits. So, forgetting the old man for the moment, I tried to read those ancient documents for their own sake. On a cursory reading I found that the two papers were decrees of the Court of the District Judge of Kanpur in a suit instituted in 1845 by one Maharaj Singh of village Nadiha Khurd, District Kanpur, to redeem lands mortgaged by him with possession to someone for Rs. 710 in the year 1824. He had instituted the suit on the allegation that the mortgagee and his heirs had been in possession of the mortgaged lands already for over 20 years and had, out of its rents and profits, recovered the mortgage money, principal and interest, in its entirety and the mortgagor therefore was entitled to get back his land without any payment. The answer to the suit on behalf of the creditor was that rents and profits were insufficient even to meet the interest on the loan and therefore the principal and a good deal of the interest were still outstanding and the suit must therefore fail. The trial Judge had decreed the suit. The District Judge had, however by his first order (Roll No. 1), directed further enquiry and accounts, and though even after remand

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the trial court had found that the entire loan, principal and interest, had been satisfied, the District Judge had in a second and final order (Roll No. 2) disagreed with the trial Judge and had held that even the interest (some Rs. 105 were still due) had not been fully discharged and on that finding had dismissed the suit.

This was the net result of my perusal of the two rolls. I now turned to the old crazy man before me and enquired who he was, and how he was concerned with this land, and what he had to do with these papers. He replied that he was the son of the mortgagor Maharaj Singh, who had instituted the suit of 1845, and the family was still out of possession of their ancestral land. The land had also passed out of the possession of the original mortgagee, had changed hands four or five times and was in the year of grace 1909, in possession of an industrialist millionaire of Kanpur. This gentleman professed to be the complete owner of the property in his own right and under a purchase from the last holder as a free-hold property. He denied the existence of any mortgage and in all the official records he was and even his predecessors had been recorded as the full, complete owner of the property which had of course since 1824, increased enormously in value—at least 20 times over.

I naturally asked the old man—I found his name was Bachchi Singh—about other relevant papers of the case, for instance, a copy of the mortgage deed and other ancient documents and title deeds. He said that besides the two rolls he had nothing in his possession, not even a copy of the mortgage deed, to show that his ancestors had been owners of the property or were in any way connected with the land or had ever mortgaged it to anybody in the world. Any reference to old records of this civil judicial proceeding was out of the question because in the Kanpur district during the disturbances of 1857 all official records had been

completely burnt and destroyed and nothing could be had about them either from the civil courts or from the collectorate.

Thereupon I meekly suggested to my wild-eyed visitor that his was an exceedingly difficult proposition. What could be done for want of papers? There was not even a copy of the mortgage deed available. But he would not listen to anything that I would say. He kept on repeating, sometimes mumbling, sometimes crying, sometimes shouting,—“ You fight everybody’s case; people fight all sorts of cases; no one fights my case. Why don’t you fight my case?” I was nonplussed. I didn’t know how to get rid of him. The only thing that occurred to me was to ask him to leave the two rolls with me and to tell him that I would further study them, that he had better come again and then we would discuss the matter further. There was, of course, no question of any fees or any kind of payment at that stage. After he left I do not know what happened, what demon seized me, but somehow the case possessed me, I was obsessed by it. I took the papers to the Bar Library and read them again with greater care and casually mentioned this incident to a colleague at the bar with whom I had become familiar (by God’s grace he is still alive and is now like a blood-brother to me) and he laughed at it. “Oh, is it that old Bachchi Singh,” he said. “Has that madcap been to you also? He is a maniac, he has been going about with this case of his in the Kanpur Court grounds now for the last ten years, and there is not a single beginner in the profession whom he has left untouched. Don’t you worry about it! Shake him off.” But this was easier said than done. I was not now possessed by Bachchi Singh, I was possessed by some other invisible powers and the case would not let me alone. As I have said, I was then completely raw and green at the bar. My knowledge of

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the law of mortgages and particularly of the law and procedure as it prevailed in the days of the *Sadar Dewani Adalat* in 1824 and thereabouts, was almost nil. I cannot recount with accuracy how many books I read. In my senior's (Pandit Pirthi Nath's) Library there was substantial literature—Rules and Circulars and Regulations on this branch of the law. There were lots of old reports in the Bar Library. For days and weeks I literally pored over all the old text-books that I could come across and with the aid of indexes I went through practically every single reported case decided during the 19th century in any way relevant to my case. The result was that I became brimful, so to say, of the law and procedure as it prevailed between 1800 and 1860. Bachchi Singh all this time continued coming to me. When he saw the intensity and almost the passionate devotion of a young lover with which I was absorbed in his case, he became more tranquil of mind and a little less abrupt in his manner. I imagine such sympathy he had not experienced ever before in his life.

But mere sympathy could not go far. The question was what was to be done. It seemed to be literally a case of making bricks without straw. As I have said, there were no papers. I had not only gone through the law books and the law reports for instruction as to the old procedure, but I wasted days and hours in the office of the Collector going through the settlement records of this particular village after the year 1857. I may mention here for the information of my readers that Permanent Revenue Settlement is not in force in the Kanpur district of the United Provinces. Revenue settlements occur every 30 years and while in the Revenue settlement made in the years 1901-1905 in the Kanpur district the record made no reference whatsoever to Bachchi Singh or his father and the name of the person then in possession was entered as

a simple proprietor of the estate, the Revenue settlement records of the previous settlement of 1870-1875 were much more revealing. I looked through indexes and registers and abstracts and fugitive papers and I found that before the year 1857 the name of the old owner, Maharaj Singh, had been removed from the Revenue records as the mortgagor of the property, and the name of the mortgagee had been entered as the full proprietor of the estate. Twenty years later in 1875 during Settlement proceedings Maharaj Singh had applied for the amendment of that entry in the Revenue records, and for the restoration of his name as a mortgagor. To this the reply made on behalf of the proprietor in possession was that the mortgage no longer subsisted, and that after the proceedings in the District Judge's Court in 1849 execution had been taken out of the decree for costs against Maharaj Singh, and in that execution his title and rights in the property as a mortgagor had been put up to auction and had been purchased by the mortgagee himself and thus the mortgage had been completely extinguished. But these amendment proceedings were being held in a very summary manner before a Revenue Officer, and it appeared that on the date fixed for final disposal no one appeared on behalf of the proprietor, and the Deputy Collector ordered that Maharaj Singh's name should be entered as a mortgagor. This entry was made, I may say again, in 1875, but somehow in some way—I could not make out how—the order was again a few years later reversed, and Maharaj Singh and his family all disappeared from the scene completely.

The Revenue settlement records, however, contained a lot of other miscellaneous information in abstract form such as the revenue assessed upon the mortgaged land and the recorded rent payable by the cultivators therefor from time to time during the 19th century. It was obvious that even if the decision of the District Judge that, in 1849,



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the principal and a portion even of the interest were outstanding was correct, during the last 57 years the situation had completely changed, and not only the mortgage money must have been completely satisfied long ago but an enormous surplus left in the hands of the mortgagee payable to the owner.

Further examination of the two rolls, however, disclosed another snag in the case. They were obviously old documents, but I found that while one of them was what we call in the law courts a certified copy, namely, a copy prepared and issued under official seal by the court itself to a suitor, the other was a purely unofficial copy which may have been made at any time by any one at home. Certified copies of judgments and decrees are very valuable documents. These are admissible in evidence without any further proof. A plain unauthorised copy normally is of no legal value whatsoever, and no court will admit it into evidence. Now it so happened that the plain copy was that of the earlier judgment of the case. The certified copy was of the final order. In the first paper were reproduced *in extenso*, according to the procedure current in those days, the judgments of the trial as well as the appellate courts and both judgments contained essential details of the mortgage deed itself—names of the mortgagor and the mortgagee and the date of the mortgage and the amount advanced. In the second paper neither court had considered it necessary to set out these details over again. If you excluded the plain copy from the record, then nothing would be left to indicate the date and nature of the mortgage transaction as well as the names of the parties thereto, and on that point there was no other evidence available of any kind.

Neither paper stated clearly the rate of interest payable on the principal lent. This difficulty however I was able to



overcome because about the year 1806, to check excessive usuries, a Regulation had been passed that no court should allow more than twelve per cent. interest per annum on a loan account between a debtor and a creditor. So whatever may have been the original rate of interest stipulated in the deed in 1824, for court purposes twelve per cent. was the only admissible rate.

Another seemingly insurmountable hurdle was the question of limitation. Law allows sixty years to a mortgagor to redeem and get back his land from his creditor. These sixty years had expired in 1884. Without entering here into a legal discussion I may just mention that an extension of the period of limitation is permissible by law provided the mortgagee or his heir and representative acknowledges in writing his status as a mortgagee and the right of his debtor in the land as the original proprietor. For this acknowledgment in writing I fastened upon the amended entry in the Revenue register of 1875 in which the Assistant Collector had ordered Maharaj Singh to be described as the mortgagor and a lady, then in possession of the property, as the mortgagee and when this document was prepared, then in accordance with the standing rules it was signed both by Maharaj Singh and on behalf of this *pardanashin* woman by the official village accountant, called a Patwari in the United Provinces. The signature was rather curious. It was stated to be of " Mukta Kuar by the pen of Sheo Dayal Patwari."

I was now absolutely full with the case and was determined, come what may, to launch my little craft in the great Atlantic of litigation. Bachchi Singh was as poor as a church mouse and therefore the whole thing had to be done on the most economical lines, and yet I was also determined to value the case at a high figure so that it might go straight to the High Court on first appeal.

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On the basis of the two rolls and a certified copy of the 1875 revenue entry I reconstructed the mortgage deed and built up a pleading. I asserted (without any real knowledge) that the stipulated rate of interest was only 12 per cent. per annum. I said that taking the judgment of the District Judge as a starting point while the principal and a small bit of interest were outstanding in 1849, within ten years at best, the whole of the mortgage money, principal and interest, had been definitely discharged and then I alleged that the surplus in the hands of the people in possession for the past 50 years had amounted to an enormous sum, and I ended by claiming that the land should be awarded back to Bachchi Singh (the son of the original mortgagor) and an account of rents and profits should be taken and he should also be awarded thousands of rupees of surplus profits due to him. And to avoid the bar of limitation, I relied upon the 1875 entry as an acknowledgment of the mortgagor's title by the mortgagee. On the sum of Rs. 710, the original mortgage loan, I paid a court fee of Rs. 53 and I valued the suit for purposes of jurisdiction at Rs. 5,200 and instituted it in the Court of the Subordinate Judge of Kanpur. I impleaded as defendants in the case every single individual or his heir or legal representative who had ever been in possession of the land ever since 1824 ending with my friend, the industrialist millionaire then in possession. And so the die was cast.

When the news of this pleading and litigation spread there were literally shouts of laughter in the Bar Library. The claim was considered to be a crazy one. Bachchi Singh was crazy and so it seemed was his young pleader. Nobody took the claim seriously. It was absurd on the face of it. Many of the defendants did not even bother to put in appearance. The millionaire in possession, of course, engaged several leaders of the Kanpur Bar on his behalf.

But I think Bachchi Singh's luck had definitely turned the corner and these leaders of the profession, I suspect, were much too complacent about the case. Neither they nor their client appeared to take it seriously. There was no mortgage deed; and plainly they thought there was no valid acknowledgment and the suit was clearly time-barred. Then again who could ever hold that the acknowledgment had been (as the law required) signed by the mortgagee. The case was a frivolous one on the face of it. I think none of the defendants ever went to the Collectorate to make any enquiry or ever looked into any official papers about the case. Moreover they made one grave mistake. Without examining the two rolls carefully they assumed them both to be certified copies. And in the defendants' written statements it was clearly admitted that a mortgage deed had been executed on the date and between the parties as alleged by me in my pleading. This admission turned out ultimately to be a matter of vital importance.

Apart from the admission of the factum of the mortgage and its date, the defendants denied the claim completely in every way and urged that the mortgage, if any, had been completely extinguished and the claim was wholly groundless and a vexatious one.

The first hearing of the case was a striking one indeed in many ways. The learned Judge was a jolly old gentleman, a kind-hearted judicial wit. As the case was opened before him and he read the pleadings for himself, he smiled broadly and thought definitely that it was certainly a very uncommon one. He took up my precious rolls and examined them closely with the interest of an antiquarian and then suddenly turned to me and said "Hallo, this one is not a certified copy at all. How do you put that in evidence?" I confess I feigned complete surprise and said, "Sir, are you quite sure about that? May I have a look at it? He turned it



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over to me and to keep up appearances I examined it most anxiously myself and then putting on an air of great unconcern, I said, "What does it matter? The paper is on the face of it genuine and the copy, even though unauthorised and unofficial, seems to be obviously a correct one. Under the special circumstances of the case you may please take it in evidence. I am sure the other side won't object." The other side were terribly excited and they objected most vehemently, and the Judge said to me, "Obviously it cannot go into evidence. I must reject it." The moment the paper was rejected the defendants' pleaders realised the implications and asked for permission to amend their pleadings and to withdraw the admission about the date and the factum of the mortgage deed which they said were based entirely upon the rejected paper. Then came my turn. I protested strongly. I said admissions in the pleadings have nothing to do with any documents which may be filed as evidence on either side, and this particular admission was unqualified. It would be a monstrous injustice if in such a case defendants were allowed to withdraw their clear and unequivocal admissions. I do not know, but very likely the Judge took pity on my crazy client and his crazy young pleader, and he was firm, and he would not allow the defendants to amend their pleading. The admission stood, and thereupon I did not care a brass farthing whether my precious and unauthorised copy was on the record or out of it. My object had been served.

There was little oral evidence in the case and the case came on shortly afterwards directly for argument. This was lengthy. I do not know how I managed to survive those days. It must have been in a fit of great self-endurance—I was so full of the case—and the Judge being a slow one and also a very kind individual, he gave the young junior before him a very long and indulgent

hearing. I must have wasted, I fear, a good deal of his time, but I made bridge after bridge to cover all the gaps in the case, and on the very ticklish point of limitation I ventured to argue, on the strength of a reported decision of the Allahabad High Court, that the court should presume that the Patwari was in law an agent authorised by the lady to sign the document on her behalf, and it constituted a good legal acknowledgment, and this acknowledgment by the widow was binding upon her successors. The Judge heard me throughout with a smile flickering on his face and once he remarked with a twinkle in his eye, "*Pandit Sahib, Ap to Kankarwa kacche dhage par ura rahe hain*" (You are trying to raise your kite on very thin, untwisted thread, or in other words, you are building a house of cards). But I went on and put forward every argument I could conceive of in my favour. I felt as if Bachchi Singh and his children were tugging at my gown and imploring me to carry on.

The leading advocates on the other side tried to laugh the case out of court, but without meaning any disrespect to them, or rather, to their memory, because they are now all dead, they took the case very much for granted and did not evidently consider that it required any careful preparation or any elaborate, serious argument. On the conclusion of the argument the Judge reserved judgment.

This learned Judge was in the habit of taking most careful notes and then studying the file at home for himself for weeks before he delivered judgment. For a month there was no news nor inkling of the working of the judicial mind. I was in a state of great suspense and was not very hopeful either, because though the Judge had been kindness personified, none of his remarks had been very encouraging. He had throughout kept his own counsel and whatever little he had said had not been favourable to my point of view.

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Suddenly a month afterwards when I was appearing before him in another case, he just turned to me and in a casual manner said, "It seems that your kite will fly after all." I understood the implication and my heart jumped. Shortly afterwards judgment was delivered and, lo and behold! the claim was decreed not only for the possession of the property but also for accounts which ultimately yielded nearly Rs. 20,000 hard cash as surplus profits to be paid to Bachchi Singh by all the defendants jointly. This meant, in substance, by my dear friend, the millionaire. The decree was as good as gold. To say that I was happy would be a great under-statement. I danced with joy. I was then very young and my readers will appreciate—and I hope will also excuse—the exuberance of my feelings on the occasion. In the Bar Library it was the talk of the day as if something incredible had happened.

There was, of course, an appeal to the Allahabad High Court. There again, Bachchi Singh's luck stood by him, and I fear the defendants suffered again from the complacency of their counsel. The learned Judges, when the case was opened before them, expressed astonishment at the staleness of the claim but ultimately upheld the decree of the trial Judge and dismissed the appeal. It is not possible for me to describe in words what Bachchi Singh must have felt on this great victory. As another client once said to me when I suggested a compromise in a case about his ancestral lands—"You don't understand what you are talking about. These are not lands; these are the bones of my ancestors." Bachchi Singh was in this case getting back his ancestral land after 90 years and I can figure to myself the tears of joy which he and his children must have shed in the family circle on this great event in their life. Not only did he get his land back but he became a sane man. The judgment restored his sanity and thereafter whenever he came, it was

not that wild-eyed, old man in tattered clothing. This was another Bachchi Singh altogether—well-clad, with four attendants, one of them carrying a hookah—and travelling in great style. What a grand man he then became!

But you ask what did I get out of the case. What did he give me? I got something priceless. He gave me self-reliance; he gave me confidence in myself; and because of him I discovered myself as a lawyer and as an advocate, and I firmly believe that the foundation of all the success which I subsequently attained in the profession was well and truly laid on the blessings and benediction of that crazy old man. Thus I owe Bachchi Singh a debt immeasurable. But you will say that this is all very sentimental. What about cash? Well, please remember, I was young and inexperienced and did not then know the rules of professional etiquette about fees fully and I thought, like Sherlock Holmes, that the case was its own reward. Bachchi Singh paid, I suppose, what he could. I got just Rs. 35 all told from start to finish, and when he won his case before the Subordinate Judge he one day came to me looking shy and awkward and with some words of gratitude he put something in my hands and that was another sum of Rs. 35. You must now add to this sum of Rs. 70 the pleasure of writing this story.

And finally before two years were out a Privy Council judgment was reported in the law reports which declared that the heirs were not bound by any acknowledgment made by a Hindu widow, and the whole of my argument on the point of limitation thus fell to the ground and the Privy Council really completely knocked the bottom out of my dear Bachchi Singh's case. But fortunately by that time the judgment in his favour had become final, and you know that an error of law is no ground for reviewing a judgment, so that was that.

4

OLD FRIENDS, OLD MEMORIES
AND NEW PROSPECTS

HAVING SPENT MY life in the practice of the law I naturally love the legal profession. Under the British rule it was the only profession—in a way it was the creature of that rule—which enabled Indians to show their aptitude and skill for exposition of law and jurisprudence. As Judges they won universal admiration for their judicial probity, acumen, wisdom and independence. As Advocates they won renown for the highest forensic skill, experience and fearlessness in the discharge of their duty towards the client, and in the political sphere the lawyers played a great part in laying the foundations of, and then building, the organisation which became famous throughout the world as the Indian National Congress. It is true that inspired by the philosophy of life and political strategy of Mahatma Gandhi (who was himself a lawyer of no mean repute) the Indian National Congress took to direct action, and while lawyers continued to be the builders of modern India, paradoxically they were able to do so only when they quitted the active practice of the law. To support my statement I need only mention Chittaranjan Das, Motilal Nehru, Vallabhbhai Patel and Rajagopalachari among many others. It is needless to emphasise that while they left the bar for the sake of politics, they could not leave behind the experience and sagacity which they had gained and imbibed in the law courts. India has now become free, and I sometimes hear comments that in this changing world there is not much room left for the legal profession. There is no future before it, it is said. It is condemned as if it were a



parasite on the capitalistic structure of society. In a social welfare State many people think that lawyers have no place. I do not share this opinion. I think it is mistaken, and that it is a great error to treat the legal profession as a mere adjunct to, or product of, capitalism. The function of a lawyer is not to protect or advance the cause of a man of property. His main function is to help the citizen in safeguarding his life and liberty, and with life and liberty, of course, goes as much property as the law allows. In any political structure which is based on law, there must be an honoured place for lawyers. Indeed, Judges and Advocates must be the pillars of such a structure. Without them to keep it in proper repair and see vigilantly to its foundations, whenever so required, the edifice will soon tumble down. Of course, it is open to any people to say that they will build their political constitution not on the supremacy of the law but on the supremacy of the personal will and discretion of any particular individual or series of individuals in succession. Then it might be a different matter altogether. Then the reign of law will disappear, and the reign of discretion, arbitrary and unfettered, will commence, but lawyers and advocates may even so, in such an order of society, continue to discharge useful functions.

In India, however, we have chosen to abide by the reign of law. All our parliamentary institutions are built upon it. The Constitution guarantees rights and liberties to the individual citizen, and with the well-known maxim that every citizen is presumed, no matter how ignorant and even illiterate he may be, to know the entire body of law, our system cannot work even for a single day without lawyers, advocates and judges keeping the machinery going. And I go further and say that while the Indian legal profession during the last hundred years won a great name for itself, it had no genuine opportunity for real constructive service.



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It had no scope to show its talents for constructive statesmanship and law-making. That opportunity has now come in this free India. The existence of freedom is the prerequisite for the exercise of this noble profession in its highest form, and I suggest to every Indian young man and woman that provided you have the aptitude for the law and you are not averse to hard work, and you resolve to observe the basic principles of righteousness and rectitude which underlie all rules of professional ethics and professional conduct, there lies before you the brightest future imaginable. Service in Government departments or private industrial concerns and other professional and business careers leave little time for interest in politics. Only the legal profession, through its very exercise and the opportunities it offers for the widest contacts with all sections of the community, can make a citizen a good politician. I am using the word 'politician' in its right sense as one who is interested in political welfare and in the art of self-government. It is only the lawyers who are qualified, by their knowledge and practice of the law, to become members of legislative bodies, and also with further training for Ministerships and other high offices for shouldering heavy responsibilities.

The reader may think all this as a rather irrelevant introduction to my reminiscences of the law courts. That again would be a mistake. As I look back upon a very varied practice, the number of cases, interesting cases, which come back to my mind is large, but in making my selections I keep constantly in view only those which may not only be interesting to the general reader, but also may be of some interest and instruction to the beginners in the legal profession. I had the great blessing of becoming a pupil of leaders in the profession, both in the district court as well as in the Allahabad High Court, who were not only distinguished in talent but irreproachable in moral grandeur.

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In our sacred books great stress is laid upon the necessity of having a Guru because it is said that his moral influence even from a distance envelopes you and keeps you straight and protects you from lapsing into error and improper behaviour. That applies to every profession and particularly to the legal profession, where sometimes temptations are very great. Dr. Tej Bahadur Sapru, the great Advocate of the Allahabad Bar, lived many years. He was a soul of honour. I was not only his pupil in the Allahabad Law School in 1905, but also subsequently worked in his chamber for several years from 1914 onwards, and intimate daily contact with him throughout my life saved me from many a pitfall. And I am anxious that what I learnt from him should influence the coming generation as it influenced me in my daily conduct. That applies also to my seniors—particularly to Pandit Pirthi Nath of revered memory—with whom I worked at Kanpur when I commenced my practice there in 1908. Those six years (1908-14) were remarkable in my life. The earlier years, full of anxieties and hopes, struggle and endeavour, are significant in everybody's life, and as I look back upon them, many a picture passes before my eyes, and I recollect many men from whom I acquired much experience of human nature and the workings of human mind. Many of these episodes, which were of absorbing interest to me at the time, might, I imagine, prove equally interesting to the general reader as well as the beginners in the law courts.

The career of every beginner in the legal profession—I suppose it is true of every profession—seems to be governed in the retrospect by sheer accidents. There is seldom much of any kind of planning about it. It just seems to have happened, and sometimes you do not even remember how it happened and why it happened. You can only remember with gratitude the help offered to you by



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persons on whom you had no claim of any kind whatsoever, and you are also grateful to Providence for having guided you at that juncture in acting in a particular manner which led to beneficial consequences.

My beloved Thakur Bachchi Singh about whom I wrote recently under the caption "The Story of My First Real Client" has, I find, made a wide appeal to readers of all classes throughout India. Had he been alive, he would have naturally felt greatly flattered by this public attention. I imagine the feature which drew public sympathy for him was his struggle and ultimate success for the recovery of his ancestral land after 90 years. People have since often asked me whether I have had other clients like Bachchi Singh. Well, in the matter of clients history seldom repeats itself, but you do come across not exactly replicas but people of different nature possessing some signal qualities. I was in those early days very fortunate in my clients. Very likely it has been a case of compensation in life. I started my legal career in Kanpur, an utter stranger, a completely friendless individual. Pandit Pirthi Nath, who had taken me under his wings, was disabled physically within 12 months of my starting practice and died a few months later, and I was left all alone to struggle in the great industrial city of Kanpur. Nature was kind and somehow I managed to attract the affection of one particular individual whom I shall never forget for the rest of my life. This was a jolly old man, full of vitality and with an almost unsurpassed optimistic outlook on life, men and affairs, a man who never felt down-hearted or despondent. This was Ramchandra. He carried on a substantial business of his own and had some influence in mercantile circles. I do not know why or how he began to take almost a parental interest in me. As I have said often, I was then not only young but also very youthful in appearance,

and I imagine, noticing that I had few friends of my own, he took it upon himself to lend me a helping hand. He was in his own way a devout Hindu and used to go every morning for a dip in the *Ganga*, and on his way back home he would drop in and spend a few minutes with me. I imagine that he also sang my praises among his friends, and very often he would bring along some friends of his own, who had some law business in court. He had plenty of his own. He was a gambler and therefore a born litigant, and I personally think that he was essentially honest in his dealings, but he did not subscribe to the doctrine that you must follow the right means to reach right ends. He thought otherwise. He had his own code of ethics. If his case was true he thought that winning it justified all practicable means; so making an extra entry or two in account books or writing out an acknowledgment to get over rules of limitation he did not think very blameworthy. He never confessed what he had exactly done but I had my own doubts. I sometimes expostulated with him in my youthful wisdom, but Ramchandra would not listen. He would say—"Panditji, where is the harm in this? This fellow owes me money. He should pay but does not pay, and do you mean to say I should not get over some technical difficulties by a little manipulation of my account books? There is no harm in that." I really came to love Ramchandra—so brimful was he of vitality and optimism and his concern for my welfare. I remember one case particularly well. He had entrusted a rather substantial claim to me and I lost it before the trial Judge. As the judgment was pronounced, my face fell and I was very sad indeed. We walked out of court, a rather extraordinary picture—the lawyer crest-fallen and deeply disappointed, and his client laughing and joking and showing not a trace of regret. Noticing my deep despondency, he encouraged

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me and patted me on the back and said—"Panditji, don't you be sorry about this. These are the ups and downs of litigation. This is not the only court, and we will take the case up in appeal. We will win it there. Don't you worry about it." As I write these lines, that picture of 40 years ago comes vividly before my eyes, and he proved to be right. We did file an appeal. I asked him to associate a senior counsel with me. He would have none of it. He said "No, no, you do it yourself." And then we had our revenge before the District Judge. This District Judge was also, so far as I was concerned, an unforgettable personality. He was an Englishman, a senior member of the Indian Civil Service Austen Kendall by name. I came early to his notice in a curious way. Within 12 months of my practice, I filed an appeal before him: but having completely misunderstood my brief, drew up a memorandum of appeal on a baseless assumption. The appeal came on for hearing within seven days and when I inspected the record I found that I had made an absolute mess of the whole case. It was a good one, but my memorandum of appeal was all wrong, absolutely contrary to the admitted facts of the case. I stood up to argue the appeal and put the case on right lines. Mr. Kendall heard me with some amazement, and then looking up at the young lad before him, he quietly but with a twinkle in his eyes said—"But what do you say about your memorandum of appeal? How do you justify your argument on that? Which particular ground of appeal are you pressing?" And as luck would have it I immediately said—"Sir, ground No. 6," and ground No. 6 was—"On the above as well as other grounds the appeal may please be allowed." He relished the ready answer, smiled, allowed me to continue, and decided the appeal in my favour. But this judgment was really remarkable. I remember the opening lines of that judgment

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so well even today after 42 years. He began by saying—
 “The only difficulty in this appeal arises out of the memorandum of appeal. But I accept the explanation of the *very youthful* pleader that it was drawn up on an utter misapprehension of facts,” and so on. Not only did I win my appeal but somehow I captured his fancy and that Judge for five years, as long as he remained in Kanpur, became a kind of godfather to me. I always felt very much at home in his court and he was so indulgent in his behaviour towards me.* I knew his mannerisms, inside out, and always tried to put my case in the way which would appeal to him most. He had a queer weakness. He did not like any pleader to start his argument till he had actually turned his attention towards him and started by saying ‘Yes, please.’ I knew that, and so I always sat quite tight and never opened my lips so long as he did not turn towards me by saying ‘Yes, please.’ Other pleaders, who did not know this particular eccentricity, would jump up and start arguing, and somehow that always created a prejudice against them.

So, when the Court Reader called on Ramchandra's appeal for hearing I sat quiet as usual before Mr. Kendall. Dr. Sulaiman† had come down from Allahabad on behalf of the defendant. We had a rather comic scene in court in Ramchandra's appeal. Dr. Sulaiman did not quite

* Mr. Kendall was very keen that I should enter the Provincial Judicial Service and strongly advised me to apply, saying that he would see to it that I was appointed at an early date. I was very willing and began to collect the necessary certificates. But my father—bless his soul—put his foot down upon it and wrote that I must carry on. I obeyed him and informed Mr. Kendall accordingly. Had I entered the Judicial Service I would have retired on a pension in 1942 on attaining the age of 55. That's how my life has drifted in an unchartered way all through.

† Dr. Sulaiman had a distinguished career at the bar. He rose to be the Chief Justice of the Allahabad High Court and was one of the first Judges of the Federal Court at New Delhi. He was an erudite lawyer with a keen analytical intellect.

understand what was happening. The case had been called, but counsel for the appellant was sitting absolutely unconcerned and nobody was saying anything. And then Mr. Kendall after a while turned towards me and said—"I imagine all the relevant judicial decisions have been noted by the Judge in his judgment." I said "Yes, Sir. There is just one more which has come recently." And he said "What is the reference?" So I gave the reference. I said nothing more and did not start any argument because he had not given me the cue by saying 'Yes, please.' And then he turned towards Dr. Sulaiman and said—"This case involves a point of law. Don't you think it would be more convenient if you start argument on behalf of the respondent, and then Pandit Kailas Nath would give a reply. That would save time." I immediately took the hint and said to myself that the case was won. So, poor Sulaiman, who did not know the working of Mr. Kendall's mind, started his argument and took two hours. The Judge pretended to listen attentively and, I believe, made all sorts of pictures in his so-called notes, and when Sulaiman finished, he turned towards me and said—"I would let you know on Monday whether I would like to hear you." I said—"Very well, Sir," and then we came out and I said to Ramchandra that the case was won. And on Monday the judgment was delivered allowing the appeal. In this way was my optimistic friend Ramchandra justified. Ramchandra lived to be nearly 90 years of age. He would always come to me at Allahabad with the same vivacity, the same fatherly interest and the same concern for my welfare. May his soul rest in peace for all that he did for a young man who needed such encouragement the most at that time in his time.

Then there was another friend of a different description, but definitely a great character in his own way. This was

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a Thakur, well-proportioned and well-built, and very jovial and very dark. He lived in one of the villages of the Kanpur district. I came in contact with him in a remarkable manner. One day I was sitting in the Kanpur Bar Library, and then came this individual and told that he was a defendant in a pending case, and enquired if I would take it up. I enquired about the names of his pleaders, and he mentioned some very senior counsel. I was a bit surprised as to why he should come to a beginner in the profession with not even two years' practice to his credit. So, I asked him about the court before which the case was pending, and he mentioned the Subordinate Judge's court. Now it so happened that that particular Judge was a distant cousin of my father's. I had taken particular care to keep myself aloof from this Judge as far as possible because I had been warned that trying to build up a practice through such means would be the surest road to damnation and perdition. But this litigant being very clever and cunning too, I imagine, had made all sorts of enquiries, and very likely had come to know either of my relationship or at least that the Judge and I were members of the same community. My conscience was however clear. So, I enquired about the sum involved in the case. He told me it was Rs. 1,200, and I asked my usual fee in such cases, half of the taxable fee, namely Rs. 30. And lo and behold, he immediately put Rs. 30 in my hand and handed over the papers to me then and there. The case was one by a secured creditor to realise his security. The mortgage was a stale one and there had been a payment years ago of Rs. 508 by the debtor. The plaintiff had given credit for this payment of Rs. 508 and claimed the balance. On behalf of the debtor, my client, however, it was pleaded that this payment was in full discharge and nothing was due on the mortgage. That was the only point in the case. For Rs. 508 there was a

registered receipt, and the question turned upon its interpretation whether it was a receipt in full discharge or whether it was only for a payment in part. Unfortunately the language was much too vague, capable of construction either way. In support of the theory of full payment further documentary evidence had also been produced. When the case came on for hearing, all my senior colleagues were absent. I subsequently discovered that they had told the client that the Judge was dead against him, and so this individual—Mohan Singh by name—had thought of this device of engaging me to influence the Judge in his favour. Anyway, I had to argue the case and I said what I could. The Judge decided against me, made some pretty strong comments in his judgment on the conduct of the defendant, called his account books completely cooked ones, and there the matter rested. Mohan Singh, however, to my great surprise, came to me later and asked me to file an appeal. I said that this was a very serious proposition. The judgment was a very strong one and there was every possibility of the District Judge not only dismissing the appeal but directing criminal prosecution for perjury and fabrication of false evidence; so, he had better go to some senior lawyers. He said—"Panditji, I have been to so and so; everybody says that the case is hopeless, but I have made up my mind to fight and you are the person to fight, and you institute the appeal." The appeal had to be filed before my indulgent godfather, Mr. Austen Kendall, the District Judge. So I did it, and when it came on for admission—I knew Mr. Kendall's ways—I merely said that the judgment was very one-sided. There was a registered receipt for this round sum of Rs. 508, and "Can you imagine a round sum like Rs. 508 being paid in partial payment?" Mr. Kendall was impressed and admitted the appeal, and ordered notice to issue to the other side. The appeal took

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many months to come on for final hearing. In between Mohan Singh became my honorary publicity agent in the rural areas of Kanpur.

One day when I was sitting in my office, in came Mohan Singh with a very aristocratic-looking Rajput, bearded, with a fierce moustache which he was always twirling—altogether a striking personality. Mohan Singh introduced him to me as Thakur Umed Singh, a member of one of the leading Rajput families of the Gwalior State, whom everybody, he said, affectionately called Chimnaji. He said “Panditji, Chimnaji is in great trouble.” I was all sympathy and enquired what it was about. Mohan Singh thereupon became eloquent, and all through Chimnaji went on twirling his moustache, nodding his head from time to time in approval. Mohan Singh said that the trouble was due to Chimnaji’s grandmother. I registered surprise. Mohan Singh continued—“She refuses to die, Panditji. She won’t die. Can you conceive of this injustice?” My surprise became more pronounced. He went on. “She is the step-grandmother (mother’s step-mother) of Chimnaji. Her husband died 40 years ago, and here is the old woman sitting tight over this large property simply out of spite for Chimnaji and his brothers, and she refuses to die. And she has been harassing them all along and they are simply looking at the property and cannot get it.” It was almost tragic beyond description the way he said it. And then he said—“For years and years she has been wasting all this property, and Chimnaji, poor man, has had to embark upon litigation several times to prevent this waste, but to no purpose. The cases have gone up to the High Court. We engaged Pandit Sundar Lal and Pandit Motilal, but our luck was all against us and we always failed all through, and there she is sitting tight over the property. And do you know what she has done now? She has brought a boy

into the village, has adopted him as a son to her husband and has given out that 40 years ago her husband, before he died, had given her oral permission to adopt. Absolute falsehood, Panditji, but there it is. Now this is a deadly blow, and we have come here to you to save us from this calamity of an adoption. All this story is false." Well, there was something to build a case upon. But the property was worth two lakhs of rupees, and I said that I could not possibly take all this responsibility. And then Mohan Singh said—"You associate any senior of your choice with you. We entrust the case to you." Thereupon I drew up a plaint denouncing the story of the oral will and sought a declaration that the adoption was wholly void in law. In due course the defendant filed a written statement. The old lady—she was called a Rani—filed a defence of her own. She insisted upon the oral will and pleaded that the adoption was perfectly all right. Issues were joined and the case awaited trial.

One night at about 10 o'clock I suddenly heard a knock at the door of my house. I was my own night watchman. My servant had gone away after finishing the day's work. So, I answered the call and in walked a man, who said that he had been sent by Chimnaji. I asked "What for, what has happened?" He said "Panditji, the grandmother is dead. Chimnaji, while taking the dead body to the *Ganga* this morning, has sent me here straight from the village to ask your advice as to what should be done now." Now that I look back upon it, I am still tickled by the humour of the situation. Here was a youthful lawyer of about two years' standing called upon to advise what was to be done. I said "What about the adopted son?" He said "He is there in the village." I said "Are the villagers in favour of Chimnaji?" He said, "Yes, sir, they are solidly behind him." I said "Better drive the son out of the

village, if necessary by force, and then take possession of the entire property." And this man said "Right o', we shall do this, sir." And he went back, and I learnt subsequently my advice had been followed to the letter. The adopted son—poor fellow—was driven out by threats of violence and with the aid and connivance of the villagers, Chimnaji took possession of the entire property including all the seven big villages which lay in a compact block. And then we had administrative proceedings in the Revenue courts for the rectification of Revenue registers, and Chimnaji came and said that I must go to the court of the Revenue officer. I said "There is no need. The proceedings are all uncontested, and the order would be made as of course." But he replied "Panditji, what are you saying? Do you mean to say that we are going to leave you in this fashion? You don't know what has happened. We have been yearning for this property for over fifty years, and goodness knows how much money we have spent upon litigation, and what worries we have undergone. And then we came to you, and not only did you file the case for us, you have done something more. You have actually killed the grandmother. It is only because of you that the grandmother is dead, otherwise she would still have been alive to bother us. Please take it from us that there would be no proceedings anywhere in any court in which you will not have to go, contest or no contest. We won't move an inch without you anywhere." And that is exactly what happened. I do not know in how many cases he took me absolutely unnecessarily, and he made always so much of me. Once at the conclusion of an *ex parte* case and purely formal proceeding before a Revenue officer in a village he insisted on taking me in a procession on an elephant to his own native place. There I was received, and spent the night, as an honoured guest of the family. These revenue proceedings

were in those days held by Revenue officers on tour and I remember that in another case we had to wait long under the trees till the case was called at 9 o'clock at night in a tent. Another case of his, a substantial one, was instructive because it taught me how human actions were influenced by traditional notions and beliefs. The grandmother had on request by a neighbouring landlord made a gift to him of 10 acres of land to enable him to plant a fruit orchard upon it. The land was at the time of no value whatsoever. The donee who was a man of taste spent large sums of money in collecting together fruit trees of rare varieties from all over India and when the old lady died there was a flourishing and captivating fruit plantation on the site. The gift was under the Hindu law wholly bad and ineffective after the death of the grandmother, and Chimnaji instructed me to institute a civil suit for recovery of the land. It was a plain-sailing case and there was no answer to it, and the trial Judge made a decree in Chimnaji's favour giving liberty, however, to the defendant to remove his trees within 12 months. The defendant appealed to the District Judge. The learned Judge, a Hindu officer, said to me at the hearing "Of course you are entitled to the vacant possession of your land but why don't you pay some compensation for these useful standing trees. It would be a pity if they were cut down merely for the sake of timber," and he suggested a sum of Rs. 5,000 which, in my opinion, was very reasonable indeed. I asked leave to go out and have a talk with my client (Chimnaji) over the matter and there I found Chimnaji wholly unwilling to accede to that proposition. And when I expatiated upon the beauty and utility of the garden he said "Don't you worry about that. The garden will come to us as it is, whole and intact. Don't you know it is sinful to cut down a green fruit tree, and I am sure the defendant will never do it. He would

not commit such an act of impiety and go to hell for it. Therefore why should we pay any sum of money for it. This orchard is destined to come to us as it is." I had no answer to this and I returned inside the court room and tactfully informed the Judge that I was very sorry my client had no available cash to pay any compensation at all. The Judge pulled a sad face and was rather hurt but could do nothing and he confirmed the decree as it was. Chimnaji proved to be perfectly right. After the lapse of a year he got the land, trees and all. The defendant behaved as a pious Hindu should. God bless Chimnaji. He continued to hold me in high regard and I enjoyed his friendship and of his sons and nephews for many many years.

Perhaps my readers will ask "What about Mohan Singh's appeal, what happened to it?" That I won, not because of any particular skill on my part but because of the wonderful advice given by that great leader of the English Bar, Sir Charles Russell, to a junior of his. The case was proceeding in court and this young man was industriously taking down notes. Suddenly Sir Charles, who was well-known for his impatience and abruptness of manner, turned to him and enquired "What are you doing?" The junior replied "Taking notes, Sir Charles", whereupon Sir Charles burst forth "What the devil do you mean by saying you are taking notes; why don't you watch the game, the game is on the table." I always watched the game, and in India where civil trials are always without a jury that meant watching the Judge, and to that invaluable counsel of Sir Charles Russell I owed my success in Mohan Singh's appeal and hundreds of others too.

SOME LEADERS OF THE ALLAHABAD BAR*

A PERUSAL OF THE notable addresses of Sir Tej Bahadur Sapru and Chief Justice Verma on the great 15th of August, 1947, at the flag-hoisting ceremony set me thinking of the leaders I have known at the Allahabad Bar. Sir Tej Bahadur paid a striking tribute to Pandit Jawaharlal Nehru, and the Chief Justice mentioned many of those who are no longer with us and who in their time made a great contribution to the cause of India's freedom. I thought it would be an act of piety on my part and might be of interest to those who would follow us in the profession if I were to describe those with whom I had the privilege to work at the Bar. This record is bound to be incomplete for two reasons. When I joined the High Court Bar in 1914 there were several who had virtually retired from the profession. Notable among these was the doyen of the Bar, Jogendranath Chowdhury, a brilliant and gifted advocate who, because of growing years, was devoting his time mostly to his hobbies of gardening and of reading Shakespeare with University students as a relaxation in his home. And then there was the great and revered Madan Mohan Malaviya, the silver-tongued advocate and orator who had deliberately turned his back on a most lucrative career to devote himself wholly to the service of his country. I saw him in the High Court occasionally once or twice in the year, his last appearance in 1923 being a labour of love for the convicted prisoners in the well-known Chauri-Chaura case. And the other reason for the imperfection of this record would be the very disturbed

* Published in 1948.

course of my own practice at the Bar since 1937. I started as a lawyer on the civil side and acquired whatever reputation I had as a civil lawyer, but since 1937 not only have I been in and out of the Bar and have spent intermittently years in office or in imprisonment but by some freak of fortune my practice also underwent a rather sudden change. I do not know how I drifted into being a criminal lawyer, specialising particularly in appeals against death sentences and in cases arising out of offences against the Defence of India Act and Regulations. This has deprived me of many of the privileges of an advocate on the civil side. There, you have a multitude of counsel associated with you either as your colleagues or as your opponents, and you have a wonderful opportunity of seeing others work at close quarters. And then again the work is interesting and you feel often as if you are on the stage playing in a comedy. There is never any tension in Court. There is always much liveliness, the cut and thrust of debate, epigram and repartee, the Judge often taking a hand in the game himself. The tedium of the argument, if counsel knows his business, is frequently relieved by a little honest hilarity, and subtle points of law afford great scope for intellectual displays and acrobatics. After all, very often it is only property which is at stake, and what is property but only a fickle goddess, never constant in her affections, and always changing abodes. But a criminal case, particularly an appeal against a death sentence, is a different matter altogether. There you seldom get a point of law. There is never a learned friend or friends on the other side to expose, to debunk, to ridicule or to praise. In a criminal case you feel as if you were an actor in a great tragedy. The Court is grave and solemn, as it should be, with human lives and liberties at stake. There are few judicial or forensic jests, no lively sallies, not much of wit and

humour. You see unfolded before you elemental emotions and passions working and, like a Greek tragedy, moving to their climax. Sometimes the very violence of the play holds you spellbound and it is with some difficulty that you struggle to get the prisoner in the dock out of the web of destiny that circumstances seem to have woven round him. Moreover, and that is the chief point, instead of a learned friend on the other side who argues against you on equal terms, you have the Counsel for the Crown, always fairness personified, willing to lend you a friendly hand, not anxious to secure a judgment in his favour but to see that proper justice is done to the prisoner at the Bar. This is, however, a digression. The point that I wished to emphasise was that during these last 10 years many younger men have by dint of merit come to the forefront and have now become leaders themselves. They are my great personal friends and advocates of distinction, but I have been deprived of close association with them and I am not in a position to speak about them with discrimination. They are men in the prime of life and have, God willing, many years of public usefulness before them. Again, many friends now have gone on the Bench. The Chief Justice is the oldest among them. When at the Bar I made it a rule never to discuss a Judge in the Bar Library and it will be an impertinence to do so here in this sketchy informal article.

The Allahabad High Court Bar has in one respect been very fortunate indeed. For years its ranks were not thinned by translation of any of its members to the Bench. It is true that the first Indian Judge of the Allahabad High Court, Mr. Justice Mahmood—one of the most learned Judges of the world—was a junior member of the Allahabad Bar. But that was so far back as 1885. Thereafter Pramoda Charan Banerji was promoted to the Bench in 1890 from the Provincial Judicial Service, and he continued

to adorn the Bench for over 32 years. In between till 1920 there were occasional appointments of Indian Judges from the Allahabad Bar, of Mr. Justice Karamat Hussain on communal considerations, and of Pandit Sundar Lal twice for a few months in casual vacancies. The result was that till 1920 the Allahabad Bar continued to be one of the strongest Bars in India and was in 1914, when I joined it, at the height of its powers. It commanded the greatest prestige in the public eye. Its leading members were men of great wealth and status, not only professionally but also in public life. In 1916, not less than 8 members of the Allahabad Bar were members of the Central and Provincial Legislatures. They took active interest in various public causes and institutions, led by Pandit Madan Mohan Malaviya and Pandit Sundar Lal who were the founders of the Benares Hindu University. The Bar was divided into the two familiar sections, Vakils and Barristers. Among the Vakils were Pandit Sundar Lal, Pandit Motilal Nehru, Dr. Satis Chandra Banerji, Dr. Tej Bahadur Sapru, Dr. Surendra Nath Sen, Durga Charan Banerji, Satya Chandra Mukherji, Munshi Gokul Prasad and many younger men of great talent. Among the Barristers we had Alston, Boys, the two Dillons, senior and junior, B. E. O'Connor, Dr. M. L. Agarwala and many others. At the Allahabad Bar there never was any question of superiority or inferiority as between these two sections. The Vakils had always held their own in learning and forensic skill, and civil law was their forte. Among the Barristers, in my opinion, there was one who would have made his mark anywhere in the world. I refer to Charles Ross Alston. He was an incomparable advocate. If brevity is the soul of wit, Alston established that it was also the essence of advocacy. He spoke with singular distinctness and deliberation and every sentence was forceful and made its own impression.

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It so happened that within a few years of my joining the High Court Bar there was by death and retirement and diversion to other activities, a great depletion in the senior ranks of the profession. The much beloved Dr. Satis Chandra Banerji died in 1915. Pandit Sundar Lal died suddenly and prematurely in 1918 at the zenith of his powers and unrivalled leadership of the profession. Politics and the clarion call of Mahatma Gandhi tore away Pandit Motilal from the profession. Dr. Tej Bahadur Sapru left Allahabad for two years as a Law Member of the Government of India at Delhi. Munshi Gokul Prasad was appointed a Judge of the High Court. All this was highly detrimental to the profession and a great loss to the Courts and to the litigant public. It is not in the public interest that there should be such a complete combing of the senior ranks. But it gave the younger men the chance of their life.

Of many of these eminent men I am not competent to speak with any confidence. I was too young and too junior in the profession to form any considered judgment about their respective merits. To appraise properly the judgment or the learning or the forensic skill of an advocate, you must come into intimate contact with him, see him work at close quarters for a considerable time, and you must be associated with him or oppose him in Court in a number of cases before you can judge the stamina of the man, or the power of his advocacy. That advantage I did not get. By the time that I had got a grounding Dr. Satis Chandra Banerji and Pandit Sundar Lal were dead, and Pandit Motilal had retired.

Pandit Sundar Lal—A Great Advocate

Dr. Satish Chandra Banerji was definitely the most learned lawyer that the Allahabad Bar has produced. He

treated law as a science and had read widely. But speaking superficially, his powers of advocacy were not equal to the depth of his learning. Advocacy is often one thing, and legal erudition is another. Pandit Sundar Lal was an advocate *par excellence*. He was quiet and unassuming and his manner in Court was completely devoid of any fireworks or theatrical gestures. To an onlooker he looked like the rock of Gibraltar amidst stormy seas in a Court of Justice. His delivery was not very impressive nor was his voice. Like Winston Churchill, he had by long practice succeeded in overcoming a slight defect in his speech, and indeed he had turned it even to an advantage and, yet with all this, he wove, as if by magic, the thread of his argument into a marvellous captivating pattern. When I joined the Bar he lived, shall I say, a very unsocial life in the modern sense of the word. He did not fancy dinners and lunches, nor did he seem to have any time for indulging in the usual social inanities and frivolities. He was far too occupied in his professional and educational work. I owe him personally a great lift in the profession. I had no claims on him of any kind, yet he befriended me. In June 1914 he was the first Indian advocate to be appointed an officiating Judge of the High Court. He sat exactly for 40 working days, and inasmuch as in every case of importance Pandit Sundar Lal appeared for the one side or the other, the Chief Justice appointed him to sit as a single Judge to decide single-judge second appeals. He proved an ideal Judge and disposed of quite easily and with the utmost gentleness in a pleasing manner 10 to 12 cases every day. Among these I was fortunate to have a few—some of my own, and some as a brief-holder for others. To me in Court he was as kind as to everybody else, but I learnt later that, when asked, he had remarked about me that "that young man knows his brief quite all right." Then came my opportunity. In the

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Christmas of 1914 a very important case was pending in the District Court of Aligarh. Pandit Sundar Lal was approached for his opinion. The brief was bulky. Pandit Sundar Lal said that he had no time and he could only undertake to advise provided some junior counsel was instructed to put the case before him in conference. The client naturally asked for a suitable name, and, to his great surprise, Pandit Sundar Lal suggested my name, then an utterly unknown individual at the Allahabad Bar. To the litigants Pandit Sundar Lal's word was law. The client came to me. I studied the papers and then had a consultation with Panditji. It was a complicated commercial case and required careful handling. The client was anxious that Pandit Sundar Lal should go and conduct the case in the District Court too. This Panditji positively declined for want of time, and then, to the utter surprise of the client, and to my great embarrassment, he said that the client had better take me because I knew as much of the case as he did, and would do quite as well. This was, coming as it did from Pandit Sundar Lal, the highest praise that a junior could have ever aspired to. The client was so impressed that he took me to the district, though of course, having regard to the very large sums at stake, he could not possibly leave the case entirely to an unknown junior, and therefore Dr. Sapru led me; but that visit to Aligarh early in 1915 enabled me to lay the foundation of a very large practice in the western districts of the Province. This is the debt of gratitude I owe to Pandit Sundar Lal, which I can never repay.

Pandit Motilal—A Giant among Lawyers

Pandit Motilal has won an imperishable name for himself in the history of India. As an advocate, Mr. Justice Mahmood called him a charmer. Handsome and

always impeccably attired, his was the most arresting personality at the Allahabad Bar. He was a great fighter and was at his best in a losing case with all the odds against him. I came to his notice as early as 1910 in the District Courts of Kanpur. He had come to plead for the plaintiff, a speculator in a claim to large property, and I was appearing for a very impecunious but necessary defendant in the case. Pandit Motilal's client managed to buy out every single defendant except my impecunious client, and it so happened that at that particular hearing there was none to oppose the great Pandit excepting a young boyish-looking Vakil, 23 years of age, of two years' standing in the profession. He rather tried to browbeat me, but I stood to my guns and ventured to comment vehemently upon the tricky devices adopted by the plaintiff, and said in a dashing way that his case was a rotten one, and that, if given the time, I would be able then and there to demolish it. This was of course bravado, but the hearing was adjourned, and the great Pandit was greatly impressed. When I came over three years later to Allahabad that impression persisted and, in spite of the vast gulf which divided the palatial Anand Bhawan and my small humble cottage, Pandit Motilal took to me kindly and, in a case in which he came to be personally concerned, he insisted that I should personally go and argue it. Of his Advocacy I have no great personal experience. He had an enormous out-station practice, and unlike Pandit Sundar Lal who never stirred out of Allahabad, Pandit Motilal was never in Allahabad if he could help it. And when I got closer to him, his practice had ceased to be the first interest in his life; he was then immersed in politics and soon, great everywhere, that giant among lawyers was in the thick of the non-co-operation movement and soon made a name for himself throughout India.

Dr. Sapru—My Guru in Every Way

Of Dr. Sapru, as he is affectionately known at the Bar and indeed throughout the Province in spite of all his ranks and titles, it is difficult for me to speak, and indeed I do not propose to say anything here about him. For me it would be presumptuous to do so. He is my Guru in every way. I was his pupil in 1905 in the law class. He was my examiner in the LL.B. and the LL.M. Examinations, and later it was my privilege to read for years in his chamber, to devil for him in court and outside court, and then, when I was finding my own feet at the Bar, to be associated with him for years and years in dozens of cases of all kinds. The Allahabad Bar does not still realise the immensity of its obligations to the personality of Dr. Sapru. Not only numerous beginners have sat at his feet, but his chamber has been the nursery of Judges. He is the soul of honour, and his uprightness of conduct and his professional rectitude has been a beacon light to lawyers, throughout the United Provinces all these years. To us who know him well it will remain the greatest regret of our life that his present illness has deprived the country of the benefit of his great learning of constitutional law and procedure of different countries of the world in these critical days when our constitution is on the anvil.

Dr. Surendra Nath Sen

Dr. Surendra Nath Sen had one of the largest practices till he went on to the Bench in 1928. It was a delight to hear him. He was brought up in the school of Johnson, Burke and Sheridan, and his glowing well-rounded periods often enlivened the course of argument. He used to take at first great interest in politics, but latterly the profession

had claimed him as his own and what was meant for mankind he gave to his clients and to his own literary pursuits. He used to put his case with characteristic force and vigour. I opposed him often, but seldom had the good fortune even as a junior, to be associated with him.

Satya Chandra Mukerji—A Very Lovable Man

Satya Chandra Mukerji was the one Indian advocate who, in those degenerate days when almost all the Sessions Judges were Europeans and English Barristers, commanded almost the entire criminal practice of the Province, had by sheer dint of merit and his personality made a great name for himself at the Criminal Bar. His practice was enormous and his memory was prodigious. He had a beautiful command of sonorous English and he would put his case in a few sentences in picturesque language most convincingly and in a most insinuating manner. I remember rather a delightful instance of a criminal revision which he argued before Mr. Justice Rafiq. It was apparently a dead finding of fact and there was really not much to be said on the merits, so Mr. Satya Chandra Mukerji suggested that the case had really originated in a rivalry between his client (the accused) and the sub-inspector in charge of the police-station over a certain woman of easy virtue. Mr. Justice Rafiq seemingly was not paying much attention to the argument. He was twirling his moustache as was his habit. He suddenly asked: "Have you seen the woman, Mr. Mukerji?" Mr. Mukerji said, "No, My Lord," and then after another pause and some further sentences in the argument came another query from the Bench: "Is she in Court?" and the answer again was, "No, My Lord." But Mr. Mukerji turned round and someone whispered to him that the woman's nephew was present in Court, so he said, "But, My Lord, her nephew is here." Again a



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pause and the continuation of the argument, and then the learned Judge suddenly said, "Where is he?" and this individual came forward, a fairish man, well-oiled, looking smartish and very much looking a rake. Mr. Justice Rafiq looked at him, and appeared to me to make up his mind instantly and to form a fair estimate of how charming the woman must be from the looks of the nephew before him, and he said at once to the Government Pleader, "Oh, I know about all these police officers in Badaun, they are a bad lot and I have no doubt that what Mr. Mukerji says is correct. How do you support this conviction, Mr. Government Pleader?" Mr. Government Pleader, of course after this judicial intuition, could not, and Mr. Mukerji got off his client quite all right. Mr. Mukerji was in private life a very lovable man, full of anecdotes. He had a practice all over the Province, and I met him with his bulky frame frequently in railway carriages, backward and forward from Allahabad, and then he would come one day to Court after a long absence and present about 16 to 20 applications and revisions before the Judge receiving applications, stating the facts of each case as it was called by the name without reference to any notes of any kind whatsoever, and unconcerned like the Karmayogi of the Geeta as to what happened to the case after he had put his point before the Judge. That reminds me of a very apposite retort which Alston made to Mr. Justice Pramoda Charan Banerji in Court once in my presence. After he had stated briefly, as was his wont, the point in the case, Mr. Justice Banerji laid the papers aside saying that he would read them at leisure, but he added that really there didn't seem to be much in the case, and Alston replied at once, "That was precisely what I said to the client this morning, My Lord, but he said that he didn't want my opinion on the case; he wanted the Judge's opinion on it."

*My Own Contemporaries*

Among my own contemporaries I must first mention Dr. S. M. Sulaiman. Had he remained at the Bar he would have been an outstanding success and one of the great leaders of the profession; but he loved a quiet life and he was deeply interested in scientific research and mathematical pursuits. He went on to the Bench early in 1921. He possessed the greatest analytical intellect that I have come across in the profession in India, and he naturally made a great name for himself as a very learned Judge both at Allahabad and in the Federal Court.

My other contemporaries included Peary Lal Banerji, Shyam Kishen Dar, Iqbal Ahmed, Dr. Narain Prasad Asthana and Pannalal. Iqbal Ahmed early became a Judge and was therefore lost to the profession. Shyam Kishen Dar is well known and greatly respected for his unworldliness. We all love him; he is so temperamental and so impulsive. He is a very conscientious advocate and, I imagine, he considered it unfair to himself and to his client to burden himself with a larger number of cases than he could properly work on and prepare and argue himself. He had, therefore, in the days of which I am speaking, not a very crowded cause list, but he was always an opponent of whom you had to be very careful indeed. His impulsive nature sometimes led to amusing incidents. He was impatient of any interruption, and not gentle in his language when roused. Once I ventured to say, while he was arguing, that "My learned friend, My Lord, was drawing upon his imagination for his facts and on his fancy for his arguments." And noticing the ferocious look in his eyes I ostentatiously rose and moved four chairs away out of his reach. And the Judge, the

angelic Sir George Knox, benignantly smiled broadly at both of us. He appeared always in Court to be engaged with the Judge in search of the truth, as if truth is not elusive and slippery as an eel and difficult to grasp in a Court of Law.

P.L.B.—The Imperturbable

My greatest opponent and rival at the Bar, and yet my dearest friend in private life, was and is Peary Lal Banerji (P.L.B. as we call him). Traditionally at the Allahabad Bar in every generation names of two advocates have somehow got coupled together in public estimation. For years and years Sundar Lal and Motilal held public imagination as a great pair, and their rivalry and their friendship was a sight for the gods. Then came the other twins, Satish and Sapru, and later somehow Peary and I succeeded in entering this brotherhood of two. The result was that we seldom appeared together in Court on the same side, and seemed to lead a life of perpetual contention. In the High Court and outside in the districts, up and down the Province, we have appeared against each other and argued against each other day in and day out, week after week, for nearly 20 years without a break. It was an exhilarating experience. I came to know him inside out and I imagine he soon discovered all my weaknesses.

Seemingly we are poles asunder in diverse ways, in political opinions, and in our estimate of life, men and manners. For him, in spite of 40 years of sustained work, law is still the ruling passion. For me the former mistress has lost her youthful charms and her hold on me has become less and less firm. To him a new legal proposition is a thing of joy and beauty for ever and the way he examines it is like that of a jeweller looking at the flashing rays of a many-coloured diamond. He explores every aspect of it just



as an explorer explores every nook and corner of a newly-discovered island. He traces the growth and development of a legal theory and principle like a scientist expounding the development of a far-reaching and world-shaking scientific discovery. His law books, particularly his English Law Reports, those myriads of precedents, are the holy of holies, not to be profaned by the touch of idle curiosity but to be reverently opened and read and inwardly digested in the spirit of a devotee reading the sacred scriptures. Me, alas, points of law ceased to charm years ago, and now appeals against death sentences have turned legal propositions into so many holy terrors or barren wastes. His presentation of a case in the course of an elaborate argument in Court is superb and has always been my despair. Everything is marshalled so well and put forward in such an orderly fashion that you lose sight of the deftness and skill of the artist in his seeming artlessness. His delivery is most impressive, and his persuasive and flowing eloquence invests his client with the halo of injured innocence, and his legal propositions into so many unquestionable doctrines. He creates such a tremendous atmosphere that in the District Courts, where an argument is an argument and not sometimes a mere lively conversation across the table, Judges are often swept off their feet by P.L.B.'s sheer oratory. And this eloquence is not tinsel, it is real, solid stuff withal. When once in a District Court I ventured to protest against his repeating himself, the Judge quietly remarked that he found P.L.B. exceedingly helpful. There has never been any air of flippancy about P.L.B. nor has he flitted about from Court to Court like a bee sipping honey from flower to flower. Once in it he gives his undivided attention to the case before him from start to finish and if there are other cases in other Courts, well, then, those cases must wait their turn or his colleagues



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would look after them. There is no shallowness in his advocacy or in the manner of it. The study of every case is deep and profound and so is its presentation in Court—calm and unhurried. That is P.L.B's strongest point. Like Pandit Sundar Lal, no one has ever seen him ever ruffled in Court. His imperturbability is his most distinguished characteristic. I was his opposite number in almost every way—and very likely, as they say extremes meet, this very antithesis has drawn us together so closely. I was always anxious to do personally, at least something in every case in which I was engaged, and the result was that I was not seldom deprived of the pleasure of hearing my opponents in full. I did so by fits and starts and in bits, holding the fort, so to say, sometimes in three or four Courts at the same time, endeavouring to reach every Court at the psychological moment to put in a few words on behalf of my client. My preparation was, owing to variety of other interests, never very deep and I was always on the lookout for the weak link in the armour of my opponent, to break through if I could by a sudden dash and finish the case. I trusted P.L.B as one of the most fair counsel ever born, and often, when I was opposing him for the respondent, I prepared my case in Court with the help of his full statement of it. I remember a striking instance of the implicit trust I reposed in him and of the intimacy which subsisted between us, and the rather amusing sequel. There was a second appeal before Mr. Justice Stuart, a quick and rather impatient Judge. P.L.B. appeared for the appellant. Owing to rush of work that day I had not had time to look into the papers at home, and in Court I told P.L.B. my predicament and said, "My dear fellow, tell me, is there anything in your case? If so, I would look into it." He smiled and shook his head significantly. I took the hint and left the case alone. Soon it was called and the client accosted me in the corridor



and informed me of the opening of the campaign. I told him not to worry and said I would be coming along in a short while. But he was insistent and said imploringly, "Do please come, just show your face in Court and then you can come away." This was of course very artful—a dodge to drag me into Court in this wheedling way. But I was amused and I said, "Come along", and reaching the Court Room (it was Court Room No. IV) I lifted the curtain and as I was stepping into the room, with one foot inside it, Justice Stuart noticed me, and believe it or not, he just waved me out of the room with his hands. I immediately turned on my heels and told the client that the appeal would be dismissed and he would win. And what did he say? He said: "Didn't I tell you, Sir, do please just show your face, and I would win the case", and to this day I haven't the ghost of an idea what that case was about.

This is how we got on together at the Bar, P.L.B. and I. I was always in a hurry, anxious to finish a case as soon as possible because I wanted to go elsewhere, and with P.L.B. I found the way to win was to interrupt the steady flow of that wonderful argument so that the Judge's mind shouldn't be diverted from what I thought was the crucial point in the case. This led to endless half-light, half-serious episodes, and repartees, and protests, and cries against waste of time and what not. But we were the best of friends always, with not the slightest tinge of jealousy or underhand dealing between us, each always praising the other, most sincerely, in Court and outside, to the world at large.

I sometimes, in my vanity, think that P.L.B. may not possibly be finding the Court the same with me not to oppose him and tease him and interrupt him, and saying loudly, "This really has nothing to do with the case, My Lord." What a happy combination it was while it

lasted. May P.L.B. be long spared to the legal profession in the full possession of all his great faculties with which nature has endowed him so lavishly. His name is now known, and his light has spread into distant Provinces. May that light continue to shine for many years to come.

Late Mr. Pannalal

Shortly after I came, Munshi Narain Prasad Asthana from Agra and Mr. Pannalal from Aligarh joined the High Court Bar. Both of them came with great reputations in their own districts. Dr. Narain Prasad Asthana is happily still amongst us and is an acknowledged leader of the profession. Pannalalji, universally respected and mourned by all, passed away a few years ago. I had met Pannalal in 1912 at Kanpur also. He was a deeply religious man, a staunch member of the Arya Samaj, and of great character. He had an unblemished record in the profession. He had great aptitude for commercial business. Though he built up a fairly large practice in the High Court, my own feeling always was that his talents were much more suited to the building up of cases on the original side and to painstaking examination and cross-examination of witnesses rather than the cut and thrust of a debate (often miscalled an argument) in the High Court. Had he continued at Aligarh, his position there would have been without doubt of very great eminence. In Allahabad he led an easier life with not so much of taxing professional work as he would have had in Aligarh. He was a man of very simple habits, very likeable, and I am sure he had no enemies in the world.

Dr. N. P. Asthana—A Man of Versatile Talents

Dr. Narain Prasad Asthana is now, I think, the seniormost member of the Bar in the United Provinces, in



active practice for over 52 years. His is an honoured name in the profession as well as in public life. He was our first Advocate-General and held that high office from 1937 to 1945 with great distinction and ability. He is a man of versatile talents. As a legislator his name shall live for many years as the author of the Agra Pre-emption Act. As an educationist, he is one of the builders of the Agra University and he is held by the people of Agra in the greatest regard and esteem. His advocacy is gentle and sober and painstaking and he soon won and has since retained the confidence, the trust and high opinion of the Bench and Bar alike.

"Uncle" Nehal Chand

This record will be signally incomplete if I do not mention three men, one of whom I think in his time enjoyed the widest popularity in all sections of the profession. I refer to Nehal Chand, universally known as "Uncle" at the Bar. His practice was mostly confined to the western districts and was a mixed one with a good deal of criminal work in it. He lived well, his manners were courtly and charming, and he was a great favourite with everybody. Forensically he was not brilliant, though he put his cases quite forcibly. For years and years he drew to himself, as if by a magnet, a large circle of friends in his regular morning walks in the Alfred Park. I was often of that company and shall never forget his jolly and hilarious temperament. That walk every morning was one continuous merriment and made me, at least, very fit for strenuous fighting during the day in Court. On his death a rich tribute was rightly paid to his memory by the Chief Justice, Sir Grimwood Mears.

Munshi Gulzarilal—A Great Gentleman

Another held in high affection as a great gentleman was Munshi Gulzarilal, the father of Justice Harish Chandra. Munshi Gulzarilal, when I came in contact with him, had a very wide clientele, but he had become easy-going and his interest in the profession had begun to flag. He had a curious habit of always asking for one or two adjournments of every case when it came on the list, and as I was constantly trying to trim my sails according to the idiosyncrasies of every Judge and every member of the Bar, I always took it for granted that Munshiji's case would never be heard at least for a week or two after it came on the day's list. He honoured me with great kindness and to me, along with a host of others, he was always "Gulli Chacha."

Mr. Sital Prasad Ghosh—A Polished Speaker

And then we had Sital Prasad Ghosh. He died prematurely, but a more polished speaker of the English language and a more dignified presence I have only rarely seen at the Bar. His opening of a case was very attractive, and had he lived longer I am sure he would have gone farther. I remember an amusing incident connected with him. He had some trouble with the Allahabad Municipal Board over a drain. The Board prosecuted him and he was convicted and fined. He applied for revision to the High Court before the Chief Justice Sir Henry Richards, and appeared in person to argue his application. The Reader called out the case, "Application of Sital Prasad Ghosh." Mr. Ghosh stood up and began, "My Lord, I have been convicted." Sir Henry Richards looked up rather sharply and, doubting whether he had heard aright, in an incredulous tone enquired "Who has been convicted?" and thereupon Mr. Ghosh said equably, "My Lord, I have

been convicted;" whereupon Sir Henry smiling broadly said at once : "Let notice go," without waiting to hear any further about the case. It was all done so quickly and with such a mischievous twinkle in his eye that we all burst out in laughter in which the Chief himself heartily joined. As I pen these lines, that merry scene of 32 years ago in Court No. I in the old High Court building comes vividly before my eyes. Really the Bar was a great family in those days. Mr. Sital Prasad Ghosh ultimately won his case. I think it is a reported judgment.

Dr. Sapru would cap this with another classical story of the late eighteen nineties. Dr. Sachchidanand Sinha was then practising at the Allahabad Bar, living in his house on the Elgin Road. He also got on the wrong side of the municipal laws, and was convicted and fined. His application in Revision came on for final hearing before Justice Blair. Mr. Durga Charan Banerji began : " In this case, My Lord, Mr. Sinha has been convicted....."

Blair, J : " Who has been convicted ? "

Durga Charan Banerji : " Mr. Sinha has been convicted....."

Blair, J : " Who—our Sinha ? "

Durga Charan Banerji : " Yes, My Lord."

Blair, J : " Absurd, absurd, how do you support this conviction, Mr. Government Pleader ? "

Whereupon what the learned Government Pleader said, is not stated, but the accused was duly acquitted.

Babu Durga Charan Banerji—A Veteran Leader of the Bar

This reminds me of the venerable Babu Durga Charan Banerji, a veteran leader of the Bar. In 1914 he had virtually retired from the High Court Bar, though he was much in demand in Crown cases as special counsel in

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the districts. He had a large practice in his prime, and was a very sweet-tempered man of very regular methodical habits. He was for many many years Secretary of the then High Court Vakils' Association, and was a great Free Mason, very high indeed in the Masonic hierarchy. He was connected with numerous institutions in Allahabad and his name shall be remembered as long as the Anglo-Bengali School endures in the city of Allahabad. I served under him as Joint Secretary of the Vakils' Association for four years, and he took a fatherly interest in me. He once gave me the quietus in a very effective way. I had once again resumed my fitful, occasional morning walks in the Alfred Park and on the second or third day I accosted Babu Durga Charan, and I put to him the usual silly question : "*Adab arz, Babu Sahib*, I have seen you only today. Do you also take a morning walk? Since when?" And Babu Sahib quietly said : "Since 47 years;" and I literally blushed for once in my life, and quickly took myself away.

Sarat Babu—A Tragic Figure

Very few will recollect Sarat Chandra Chaudhury as a practising advocate in the High Court. He was in the latter days of his life the widely-esteemed Reader and ultimately the Professor of Law in the Allahabad University. But I cannot forbear mentioning my dear Sarat Babu here as an Advocate of the Court. A rather tragic figure, because when he retired from the profession he was in no sense one of the leaders of the Bar. The fates had endowed him with all the good things which qualify a man for success at the Bar : massive learning and scholarship, great gift of language and power of speech, a stately presence, a character of great integrity, wide professional connections. He was the only son of Jogendra Nath Chaudhury and had intimate associations with great leaders in the profession. Dr. Satish

Chandra Banerji and Dr. Sapru were his very close personal friends. But just one fairy out of spite denied him one vital quality and that was self-confidence and decisiveness. He was always full of doubts and could never make up his mind, and that neutralised, in my opinion, all his great abilities and made him as an advocate ineffective indeed. Early in my practice stray passages in two books made the greatest impression on my mode of work and style of pleading at the Bar. One was an anecdote in Justice Walsh's book on Advocacy. Justice Walsh was describing two Barristers, one very learned but with rather a poor practice, and the other not so deep at all but a great favourite with the solicitors. Justice Walsh went on to say that he was rather surprised at this and asked one of the solicitors the reason for the neglect of the more learned counsel. And the solicitor was very frank about it. He said : " When we go to counsel for an opinion we don't want his doubts, we want his certainties; we want a clear opinion as to what we should do and not a mere statement of pros and cons, and of various possibilities. Your learned friend will give an opinion extremely able, refer to numerous precedents either way, and then give no distinct guidance at the end, while the other man, who we know is less learned, has a surer judgment, and is more confident of his own views. He has no doubts. He says quite distinctly what his opinion is, whether the case should be settled out of Court or it should be fought out, and there is an end to the matter." This impressed me greatly, and I said to myself that whatever doubts and difficulties I may have in reaching a conclusion, the client who consults me is entitled to the benefit of clear-cut unequivocal advice and not a hesitating opinion. In the second book was a passage about the great Inverarity, leader of the Bombay Bar. I think it was Justice Beaman who wrote about him that Inverarity

would never take any part in any talk for compromise and settlement of the case in Court. He would say "My Lord, my client has engaged me to argue his case and not to settle it for him." I thought I wouldn't go so far myself, but I definitely came to the conclusion that my client had engaged me to argue his case and, if possible, to win it, and not to make admissions for him. It was for me to put my client's case, and it was for the Judge to pronounce his opinion upon it. My client, I thought, does not pay me a fee to sit in judgment over his case and to give it away in open Court. I therefore decided for myself that the utmost that counsel should do, if he thought there was nothing to be said about any particular point, was to keep quiet about it, to take the best points first and weakest last, and just not to mention, as if forgetting, the rotten ones. But if the Judge was in a questioning mood and would definitely ask a question as to what I had to say about the so-called rotten point, and whether I was abandoning it, I always said, unless the point was a hopelessly dead one "No, My Lord, I abandon nothing. Now that you raise it yourself, I seek your judgment upon it." Similarly, if I thought a particular witness was telling an incredible story, I wouldn't read his evidence, but if the Judge asked me whether I gave up a particular witness, I always said "No, My Lord, your lordship will please consider what the witness has said and come to your conclusion about it." This particular (call it eccentric if you will) method of mine had become quite well known at the Bar and whenever my learned friend on the other side teased me to get out any admission from me, some of the Judges interposed saying, "What's the good of this, we know Dr. Katju admits nothing." My own view used to be that counsel, while he was preparing his case in his own chamber, should be most sceptical about it. Take nothing

for granted, try to turn it inside out, and see and anticipate all sorts of real and imaginary defects and weaknesses in it. But this was all for chambers. When once, however, he stood up in Court to argue the case, all doubts and hesitations should vanish. The pleading should be direct, no beating about the bush, concise, incisive and unhesitating without a trace of doubt in it. Put your best foot forward and go ahead and, so long as the Judge wouldn't see your point as clearly as you do it yourself, continue to press it with all the strength at your command; but the moment he saw it in all its amplitude and then said he won't accept it, drop it. No question of any admission at any stage. I enter into this digression because it seems to me in retrospect after many years as I think of my dear friend Sarat Chandra Chaudhuri that his fatal weakness of hesitancy marred what would have been an outstanding career at the Bar.

Long Live the Allahabad Bar

I must, however, now conclude these rambling notes, otherwise if I go on like this they would never end. As I am writing, many well-remembered figures pass before my mind's eye, the jovial Lalit Mohan Banerji—what a fair Crown counsel he was, and what an admirable judge he made, specially on facts, and his brother, the blunt soldierly Jamini, and the delightful dear Sailanath Mukherji, who, both in bulk and in practice, so closely and worthily followed the footsteps of Satya Chandra Mukherji and who almost always opened his case with "This is rather an extraordinary case, My Lord," and indeed the engaging way he put it did make the case look extraordinary—he was such a born story-teller, and has indeed left us his "Ghost Stories" and his "Cases" in writing—and Kumuda Prasad with his massive knowledge of all possible criminal precedents—he had

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Penal Code and the Criminal Procedure Code by heart—and Agha Haider who became a judge of the Lahore High Court, and the worthy, simple-minded Mohammed Ishaq Khan, and the redoubtable Haribans Sahai with childlike innocence of heart and very persistent in his pleading, and the brilliant Kapildeo Malaviya who rose, meteor-like, so rapidly on the horizon and passed away so soon, and the noble and worthy Iswar Saran who, like Malaviyaji, deliberately sacrificed a career because of his interest in public affairs, and ultimately threw in his lot with the lowliest in the land. I came in contact with him as a law student in 1905 when he used to accompany Pandit Sundar Lal in his well-known evening drives and visit our Hindu Hostel. For 41 years Munshi Iswar Saran showered his affection on me, and the last letter which he sent me in October, 1946, on the eve of my departure for U.S.A., I shall always treasure.

The Allahabad Bar has definitely produced many men of whom we can be greatly proud indeed. Long live the Allahabad Bar !

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LAW AND LAWYERS*

I AM RATHER INCLINED to place this matter before you this evening in a somewhat unfamiliar light. Those of you who have read books on Jurisprudence would remember the definition of international law. It is said that international law is the vanishing point of Jurisprudence. That is one well-known definition. The other definition is that international law is a sort of a code to regulate the conduct of nations in international controversies. You remember that public international law is supposed to lay down rules of how wars are to be carried on, and I remember having read a definition of war, that war is litigation between nations. When I was coming here I thought to myself that one might well adapt that definition to private litigation. How would you define private litigation? I would say that litigation is war between private parties. War among nations is litigation between nations. Private litigation is war between private parties. You see the implications of it. In war it is permissible to employ all sorts of subterfuges. Those of you who are interested in this topic may well turn over some pages of public international law. Rules as to how wars are to be conducted have been laid down by conventions, by Hague Conventions, as they are called, by international agreements about civilised war as if war can ever be civilised. In war there are certain rules. But those rules definitely permit the employment of subterfuges, camouflages, deliberately trying to mislead the enemy,

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sending out messengers with false messages, tricks by which famous generals and marshals are always trying to mislead the enemy.

Similarly it seems to me after about 40 years' experience at the Bar that if one were to look matters squarely in the face, whatever the books may say and whatever the Judges may say and whatever learned lecturers may say, the truth seems to be that litigation is popularly considered to be nothing but a war between private parties; and in such war it should seem, from what one sees all round, that perjuries are permissible, forgeries are permissible, any sort of device by which you can win your cause is permissible. It has occurred to me always how great is the divergence between virtues which Judges applaud and books formulate and the realities of the situation. It is perfectly correct that Judges expect that everybody before them would come and tell the truth, that there should be no attempt to mislead the court, either by giving false evidence and also by advancing arguments on points of law or fact which one knows are not tenable. It is said that pleaders are officers of the court and they are there to assist in the administration of justice. As I said, this is what the books say. But from the litigant's point of view it is nothing but war. If moral rules were to guide members of the Bar, and what is more important, were to regulate the conduct of private litigants, there would be no or little litigation. Whenever you have a case in which there is great conflict of evidence, one party definitely knows that he is telling nothing but lies. Take any case. Supposing there is a railway collision and I claim damages and I say that I was hurt when in truth I was not hurt seriously at all. Then the evidence I shall give will be false. Take another illustration. Suppose there is valuable property at stake, the owner of it dies, and a particular claimant says, "I am the adopted

son and I am entitled to succeed to this property." The heir-at-law, the nephew, the daughter may say that no adoption ever took place. My experience is that there will be 30 witnesses on the one side, 40 witnesses on the other side, each swearing to the case put forward by his own party. Is this not war ?

I remember very well one case, because I believe it was one of the first cases which Sir Grimwood Mears tried as Chief Justice in Allahabad. It was a remarkable case. It was a case which is described in the law courts as a suit for restitution of conjugal rights. A young Muslim gentleman claimed that defendant No. 1 was his wife. He had been married to her on a certain date at 9 o'clock in the evening in the presence of two witnesses by the Qazi and with the usual ceremonies which are part of a Muslim marriage. And his case was that the wife would not come to him and she was prevented by her father or mother from discharging her obligations as a spouse. The lady's defence was that this was all false, that she was never married to the plaintiff at all. On the contrary, the very day that he was naming, at that very hour, about 9 o'clock in the evening she was married to another individual, her own cousin, by another Qazi, in the presence of a number of other witnesses and she said, " I am living with my husband and I have got two children by him." I remember there were about 30 witnesses, cousins, aunts, neighbours, the Qazi, the two witnesses, and altogether about 30 on one side and similarly 30 on the other. Both were definitely shouting that the respective marriages had taken place as alleged. Is this not war ?

Another case I remember. The point in controversy was whether a particular lady was the wife of a deceased zamindar or whether she was the step-mother of that individual. There was enormous controversy with 60

witnesses on one side and 60 on the other side. I call this war, war among private parties. It seems to me after 40 years' experience that it is regarded as permissible, that for the purpose of winning your case you may do what you like, give false evidence, procure a number of witnesses and do all sorts of other wicked things.

The books will say that it is gross professional misconduct for any lawyer to suggest the fabrication of false evidence, to instigate the production of false evidence, to incite forgeries and perjuries. But at the same time the books say that it is highly unprofessional for a practising lawyer to refuse a brief if one is offered to him for the proper fee which he generally charges on any ground whatsoever. Now I may have the shrewdest suspicion, I would be a lunatic if I do not make a shrewd guess on the merits of my own client's case, I may have the shrewdest suspicion that the case is a bundle of lies, that the witnesses have told nothing but lies, that there is very strong suspicion that some of the documents which have been produced in the case are not genuine, but I am supposed to render assistance in the administration of justice if I use all my experience, all my skill in advocacy and all the weight of my position at the Bar in persuading the Judges to hold what I do not myself believe to be true. That is permissible, that is professional conduct.

I would ask you to consider this. The difficulty has been that in private litigation Judges are insistent, lawgivers are insistent from 3,000 years that parties should observe the highest standards of rectitude, and there should be just dealing between man and man. But in the international sphere you remember the well-known definition of an ambassador—an ambassador is a gentleman who *lies* abroad for the benefit of his country. That is the truth of the matter. That is permissible under public international law.

That is the contradiction in life which really colours the whole of what you may say regarding the legal profession. Parties, when they lie, they lie because they consider it to be a war. They want to win. If parties were actuated by honesty, by a sense of fairness, no one would put up a false defence. Just as in war, marshals, strategists and tacticians employ all methods for winning the war, similarly litigants expect that their professional advisers will give them all assistance in winning their war.

There is one book which was very much in vogue,—I liked it immensely,—in my college days, Boswell's Life of Johnson. It is one of the few wonderful books that I have read. One evening Boswell, who was a barrister, put this to Dr. Johnson whom he regarded as his friend, philosopher and guide. He said, "Sir, is a barrister or advocate justified in taking up a case which he knows or believes to be false or dishonest?" Dr. Johnson, who was not a lawyer himself, said—you remember he had a very emphatic way of speaking, he was a great conversationalist,—“It is not your function to decide, that is the function of the Judge. It is no business of yours to decide whether your client has got a good case or a bad case, has got an honest case or a dishonest case. The Judge is paid for adjudicating upon those controversies. Your function is to put your client's case in the best light that is possible.” Poor Boswell did not carry on any further. It was rather difficult to carry on any argument with Dr. Johnson because, as he said, if his pistol missed fire he would knock you down with the butt-end of it. If I had been there 180 years backwards I would have said, “You are reducing the position of a lawyer very considerably. This is really doing great injustice to him. You say that it is no function of his to decide, the function of his is to plead. But God has given him eyes and ears and a little brain.” Are you, gentlemen,

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who are now going to qualify yourselves for this profession, going to say that for a sum of a few hundred rupees you shall lend all your wits, all your character, all your mental alertness and ingenuity in pleading something which you do not yourself believe in? That is what it comes to.

I, therefore, have come to the conclusion that the approach to the problem should be from a martial angle, namely, that litigation is war between private parties. That is how it is put forward. That is the truth of the matter. And it is a very sad reflection—I wish Prof. Dube might contradict me—but the truth is, if you win a false case you gain much greater reputation than if you win a true case. This is because it is considered a battle. If you have got a large number of soldiers and plenty of guns and ammunition and tanks and air support and you win your battle, no credit to you, the soldiers have won it for you. But if with a limited number of soldiers you just camouflage and you somehow or other manage to put the enemy to his heels, everybody praises you and says what a wonderful general you are, you have outgeneralled and outmanoeuvred the enemy—I do not know the military language. Similarly if you have got a true case, even your client thinks he is under no obligation to you. He does not feel under any obligation. He says, "I had a good case, what has Dr. Katju done? He cited two or three Privy Council cases in my favour. We had 20 most respectable witnesses, he just read their evidence." But if a man has got a weak case, or much worse, an untrue case, and the pleader, a perfectly honourable man—I am not talking of dishonourable advocates—a perfectly honourable man with a scheming brain and with a power of logic able to make the worse appear the better reason, or as the Vice-Chancellor may say, able to confound the issue, if he succeeds, what happens? So far as the litigant world is concerned, the advocate wins

a great reputation. Your client will come to you again and again. He will probably bring to you another five people and very likely the man whom you defeat, who loses the case, will come to you again himself. He will say, "This is a very ingenious man, I think I had better engage him." But my own feeling is that morally you lose. The popular estimate of a lawyer is not very flattering. The popular estimate of a lawyer is, "The fellow does work, you can make him do anything." The hall-mark is insincerity. You know the popular phrase, so-and-so talking to his brief. Tell him, will you please argue this, something in favour of prohibition. He will probably draw out about 100 reasons showing why prohibition is good. But if you ask him, to say that prohibition will diminish the revenue and very likely the Allahabad University will not be able to carry on if the excise revenue is reduced, the lawyer-politician talking to his brief will adduce 50 reasons why moderate indulgence in liquor makes you a little cheerful, and he will say, if you are a labourer and have worked for eight hours in the factory, you do require a little sustenance, a little exhilaration and so on and so forth. This acrobatic ingenuity, this ingenuity of intellect is associated in the popular mind with the practice of the legal profession. And this is a quality which pursues the lawyer wherever he may go, the unfortunate individual. If he goes to the Legislative Assembly, it pursues him there. If he goes into a private debating meeting, it pursues him there. Even in the domestic sphere it pursues him. My mother used to say whenever she was worried—she was a distinguished woman—whenever we had a discussion and whenever she thought that I had put her in some sort of a dilemma, she would say : "This is your profession." That finished that particular controversy for the time being. This is an aspect of this problem which I suspect is not

generally put forth. We talk all about the duties of the members of the Bar, but this is the underlying problem—the introduction of moral standards in a sphere in which I very much suspect that unfortunately those elements are not allowed to have much play at all.

It is not a question, mind you, of Indians or Europeans. Lord Curzon once said that truth was at a discount in Oriental countries. This is all absurd. Even in England you find cases, civil cases and criminal cases, in which one party is telling lies. In every criminal case do you ever come across a single individual, an accused person in England, who says, I have done the crime and I want to stand the punishment? Would you? In a criminal case when you start your practice, what would happen? The accused come to you, pay you handsomely and say, "Well, we have come to ask your advice about the line of defence in this particular case." I sometimes have this experience, and my impulse is to say, I sometimes blurt it out, "My dear fellow, the line of defence is to tell the truth and shame the devil." If that were to be the line of defence he would never come to me at all. I never ask him as to whether he had committed the crime. Never. It would be the greatest mistake to put that question. But the moment any one says to you, "Please suggest to me the line of defence or advise me on the line of defence," what is the implication of it? The implication of it is: Please tell me how to get out. It is a very uncomfortable position that I have put myself in. I want to get out. You read the memoirs, the reminiscences and the stories of their lives written by eminent civil lawyers and eminent criminal advocates. Everywhere you find they seemed to devote hours in consultation with solicitors and junior counsel, on what was going to be the line of defence. What does it amount to? As I said, in truth it amounts to juggling with facts, fanciful



defences. Lawyers get through, you may get through, of course in some cases by mere eloquence, mere wit. A barrister may do a lot of mere juggling. There was a well-known story of a barrister who was rather absent-minded but was very clever, and who successfully defended a person who had been caught almost redhanded with a hen which he had stolen in his pocket and he was caught by a policeman. Addressing the jury, the barrister said, "Gentlemen, I can suggest to you no less than six methods by which this hen was likely to have found its way into my client's pocket." And then he continued: "My client is a very absent-minded man and it is perfectly possible that he was thinking of some abstruse problem of mathematics or metaphysics and when he was walking in front of the shop he caught hold of the hen and he never knew it." The second method that he suggested was that the hen might have leapt into his pocket and so on and so forth. The Judge was amused and everybody was amused. The Judge addressing the jury, said: "Gentlemen, you have listened to this defence and the very remarkable speech which has been delivered by learned counsel for the prisoner. You had better go and consider your verdict." The jury came back after about 15 minutes and they said, "We think that the man is not guilty."

Such opportunities seldom occur in the profession. Take another such case. One sort of action is very common in England. It is known as a suit for damages for breach of promise of marriage. I think it was one of the finest speeches that were ever delivered by counsel. Counsel for the would-be husband, who had jilted the plaintiff and had married a widow with plenty of money and had given up this young lady, addressed the jury and said, "Gentlemen, you are called upon in this case to liquidate love in terms of cash." A wonderful phrase. I think that brought down

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damages from several thousand pounds to a few hundreds. Sometimes you do get an opportunity like this, to win your case by the beauty of words.

But leaving these exceptions apart, it comes to real war. I wish the Chief Justice of India would advise you and me—you are going to be members of the profession, I am in the profession—as to what is his opinion on that aspect of the matter. It is not a matter of which one can be very proud, that anybody can pick my brains for the asking or for consideration. I have myself argued propositions of law, in one case for the affirmative, after about six months unfortunately for the negative, on both occasions winning the cases. I said to Judges, "This is a point of Hindu Law and these are the considerations." They said, "Very well, we decide in the positive." After six months, in another case from another district, my unfortunate client contends for the opposite view. I get up and say, "Here is the decision of Justices A and B, these were the factors which appealed to their lordships, these are the opposite considerations. You had better make your own choice," and they made the choice in the opposite direction. It is not a pleasing thing.

The president has, however, asked me and he expects that I should give you my experiences and tell you how to win a case or how to conduct yourselves in courts. I can tell you something about that which may prove of interest. I regard the Judge as really an extremely unfortunate individual. That is my approach to him always for the last 32 years, a person who is entitled to my utmost sympathy because it is really a misfortune to decide controversies and definitely to come to a decision amongst a mass of false evidence, or perjuries, forgeries, fabricated documents and all that. From the Hindu point of view I have sometimes said to Judges, you must have done something very ill indeed



in your past life which has resulted in your now becoming a Judge. You remember what Tolstoy has said. He was a very great literalist. He believed in the Bible literally and he said, referring to the saying of Jesus, it is not for you to judge, judgment is for God. Tolstoy said, no human being is entitled to be a Judge, judgment is for God. Necessity to judge your fellow-beings is not an enviable position. There is the advocate on one side who says, "Here are five men, look at them. One is 80 years old, another is 70 years old. Do you apprehend that they would tell lies with a foot and half in the grave?" The advocate on the other side says, "These old men fear neither God nor the devil. Look at my men, how beautiful, how truthful they are." The Judge, poor man, is in a dilemma. I have actually seen Judges who could not make up their minds because they found it very difficult to do so. You often get the Judge in that predicament. What does he require? He requires a great friend to whom he can confide his difficulties—his perplexities, his suspicions, his vacillations. The art of advocacy consists in making him forget that you are an advocate. You create an atmosphere by which he may be led to believe that you are there to assist him, to smoothen his path, to give a little help to him here and there. It is difficult. No books can teach you how to do that. People will say, great industry is required. So it is, very great pains. A good deal of learning, enormous amount of common sense, enormous amount of experience of human nature and of the play of human motives. That only time can bring. But so far as the court is concerned, that is the atmosphere which you have got to create.

Personally whenever I go into a court of law I genuinely place myself at the complete disposal of the Judge. If he wishes me to go East, I go East. If he says he would like to hear upon some particular point at once, I say,

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"Very well, My Lord, we will go into that." I do not have any chalked out argument, not that there is no argument. If a Judge were to sit like a dummy, absolutely silent—there are Judges like that who would never speak—you have to make some sort of argument, some sequence, the beginning, the middle, the end. But the Judge who talks, who tries to carry on a debate with you—in his case, so far as I am concerned, I have no line of argument with him. I just follow and whenever I feel that he is in some difficulty I just give him a helping hand, not necessarily that he should decide always in my favour. It might be a coincidence or a mere accident that I am appearing in the case for the man who is in the right. That may be my good fortune. But the impression that you have to create is that you do not want, have no desire, to mislead him.

Now this has to be acquired not only by your industry, by your capacity for taking pains, but by your reputation, by your character. If Judges come to think that a particular advocate is always hobnobbing with dishonest litigants, is always trying to assist his client in unjust causes, it will be almost impossible to create an atmosphere of friendliness between the Judge and the advocate. You have got to have lot of moral character and prestige behind you. That of course, as I said, is a matter which does not require any experience or books. As one Judge used to say, you do not require to be told that you should tell the truth, that you should be honest, that you should be fair. So far as the Judge is concerned, that is the only point which I can place before you. It involves a lot.

So far as the litigant is concerned, my experience is that the one thing which may assist you completely is to make him believe that in so far as you are concerned, his interest, his welfare, his prosperity is the first consideration in your mind rather than your own. The contrast is—*him* versus

you, the client *versus* the advocate. There is a great apprehension in the popular mind that advocates live by their profession, they want fees, as much money as they can make out of the profession and nothing else matters to them in a crisis. Suppose there is a case in which your fee might be Rs. 5,000, you might gain a large sum and the client comes and says: "There is a good offer for a compromise, what shall I do?" You will not find it easy to answer that question. The temptation is great. You may ask yourself, if the fellow compromises, what about me? A fat case will come to an end and I shall lose a big fee. Or take another case. Some one comes and he says, "Here are the papers, will you please advise me what shall I do, shall I file a suit?" You take it from me again that the man who comes to you for advice whether he should or should not start legal proceedings, desires his lawyer to advise that he should start legal proceedings. It is a sort of a mania which possesses him for the moment and the lawyer whom he consults has got to take the consequences staring him in the face. He says, "This man wants to be told that he has got a strong case." If I say, "Nothing doing, you have got a rotten case," he will go away and probably think me to be a fool. Not only shall I lose a client, but I may be considered a fat-headed man with vacuity in the top story and, also, I may lose a big fee. In such cases the principle should be that if there is a settlement of a pending case or dispute and if you think that the dispute should be settled and that the proposed settlement is a fair one, then you should say to your client, "My dear fellow, stop this litigation, accept this compromise," even though it may mean a loss of Rs. 10,000 in your fees. If it is a case of a futile litigation, then whatever may be the inducement to you to say that it is a good case, if you think that it is a doubtful case, if you think

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that success is not likely, then I suggest to you that you should say so, no matter howsoever seemingly the loss may be to you. The moment it becomes known in a particular district or in the whole province that there is a lawyer who places his clients' welfare as the first consideration in his mind and in opposition to that he simply rubs himself out—the thought of self never crosses his mind—if you get that reputation, you may take it from me that you have gone about 14 annas in winning success in this profession. That is my 40 years' experience at the Bar.

So far as intelligence is concerned, so far as industry is concerned, of course you have got to work, you have to labour. People place before you or in your charge their lives, their property, their honour, their everything. How can you then afford to be playful about these things? You have got to do your very best according to your lights. But a client is always willing to make allowances for errors of judgment, for his own misfortune. But the thing that I am pressing upon you, that thing has to be acquired, that reputation has to be gained, and it is not an easy matter. Seemingly it may mean a great hardship to you, but I suggest that you should have that always as an invincible rule that "my client comes first, always, every time and so far as I myself am concerned I come last, always, every time." This sort of thing soon becomes very well known in the district and at the Bar, and in the courts everybody feels, here is a man of character. That is as regards the court and the client.

Then the third party: the brother advocates, one's colleagues in the profession, how to deal with them? It is one of the very very pleasing features of this profession, I think without parallel in any other profession, that in spite of perpetual controversies, perpetual contentions at the Bar for 40 years, for 50 years, you find that there is such great love and affection between members of the Bar.

Outside the profession it would be difficult even to imagine such a state of affairs. For instance, I remember Pandit Motilal Nehru and Pandit Sundar Lal. In the public mind in the U. P. these two names were associated for ever together. And I believe everyday in the High Court Pandit Motilal and Pandit Sundar Lal were fighting with each other. I think that if one were to take up the law reports the number of cases in which both these gentlemen appeared on the same side would be very very small, but the respect, the affection, the brotherliness which subsisted between Pandit Motilal and Pandit Sundar Lal was a thing to witness—I cannot describe it. The day that Pandit Sundar Lal fell ill—it was his last illness—I went to Anand Bhavan. I had gone to see Pandit Motilal in some consultation. I said to him, “I hear that Pandit Sundar Lal is ill.” There was some very heavy work but he got very much upset. And he said to the gentleman who was with me, “I cannot carry on.” He rose and immediately went to Elgin Road to Pandit Sundar Lal’s house and remained there for hours and then for two days he did not do anything. When Pandit Sundar Lal died and a reference was made in the High Court, Pandit Motilal spoke and his speech no one will forget who was in the court room that day. There was a very crowded audience, and Pandit Motilal was full of tears. He could not control his emotion. It was a really memorable sight.

My experience is that this is a profession in which if you rise by honesty, by integrity of mind, of habit, no one is prouder of you than your colleagues at the Bar. They feel as if some honour has been done to themselves. We are all proud now of Sir Tej Bahadur Sapru, because we know that here is a man who has achieved distinction by his undoubted merit and his sterling character. There are no jealousies. There is little of backbiting. Jealousies and

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backbiting occur when one man tries to steal a march over others by devious ways. Those ways are known unfortunately. You go, start your work and then someone comes as a Deputy Collector or as a Magistrate or a Judge and then you begin to come out, or your clerk begins to come out, people suspect that you are intriguing, playing with a particular card, that "this particular Magistrate or Deputy Collector is related to me," and "he is a friend of my friend" or "he is a friend of my father-in-law" and so on. You adopt some devious method in order to get on. If you rise in this way it causes a great deal of heart-burning. But if it is industry, work, sheer intellectual power, then the profession means a band of brothers. Such brotherly solicitude, affection for one another, sympathy for one another, readiness to share your sorrows or joys, I have not come across in any other profession. It may be that in no other profession the contacts are so close and intimate. You take the case of doctors. Every doctor does his work by himself. There are very seldom consultations. There are engineers, architects and all sorts of other professions. They will work on their own. It is this legal profession where everyone is engaged in the same pursuit, everyone is brought into touch with one another everyday of his life. I would, therefore, request you to pay attention to this. Treat everyone of your friends, your associates with courtesy and do not try to achieve success by a short cut. The short cut leads you down into the pit. Pursue the longwinding road, the long way which will carry you to success. The short cut in truth is really a long way to enable you to reach the destination. The short cut is only seemingly a short cut.

I have got some other crotchety notions. Whenever I get an opportunity like this I try to ventilate my views. Probably in holding these notions I may be in a minority



of one, but you know that a person, who is in a minority of one, is the most obstinate in thinking that he is right. I personally think that this is a profession which is not meant for everyone. It requires a certain mental aptitude, a particular aptitude to get on with your brother men, and as I tried to put it in the earlier part of these fugitive observations, in many ways it may strike to sensitive natures as even a repellant profession. Just as a man would, supposing he were to spend his life in a hospital, particularly in the indoor wards, confined for six months, think that the world consists of nothing but sick men, similarly in the law courts you find not only contention but the seamy side of human nature, brother fighting with brother, father hating his son and then the neighbours, my God, they fight like cats, and all sorts of trickeries and attempts to push someone into the corner and to get on. So sensitive natures are repelled and if you come under the influence of doctrines which Mahatma Gandhi has preached day in and day out—he has been doing that for the last 30 years—then your position may become exceedingly difficult, because people might tell you that you cannot get on unless you assist in carrying on this war among private parties by all sorts of devices. Therefore, if you enter the profession, have a look round. My own feeling is this : that within five years every intelligent beginner in the profession should be able to decide for himself whether he can get on in the profession or not; or, to put it in other words, whether he is suited to the profession or not. Please don't misunderstand me. If you find yourself in uncongenial surroundings don't run away with the idea that you are defective or that you lack something. It is quite possible, far more likely, that you may find yourself above the profession. You cannot remain in a very rarefied atmosphere in the law courts. It is a very earthy thing. You may find yourself very

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blunt, you may find yourself short-tempered, out-spoken. You may think that you cannot remain happy. Then I respectfully suggest, cut it out. There is no use wasting your time. Even if within five years you do not make a good start, then consider your position carefully. It is a matter for individual decision. In the quietness of your own room, unassisted even by anybody's advice, you have to think it for yourselves—Am I good enough for this profession? Does it suit me? If you think that you have got the capacity, you have got the liking, you can put in the requisite industry and you can even seemingly—it does appear so sometimes—degrade yourself to the requirements of the profession, then I say to you godspeed, you will win, you are bound to make a decent living out of this profession. But if you think that there is something amiss, no matter who is to blame, then I respectfully suggest, cut it out. Please go elsewhere. When I say this to my young friends, they say, "It is extraordinary advice. What shall we do? It comes very ill from your mouth. Here you are at the fag-end of your career and your life. We have a family to maintain and you say go away." But I tell you, this may be a surgical operation but it is good. There is no use going to the Bar Library everyday and getting embittered and cursing the profession, cursing others who are getting on and placing the blame upon A, B or C. Please remember that lawyers exist for the public, the public does not exist for the lawyers. Consider as if you had never passed the LL.B. Examination, make up your mind. Do anything you like. Either enter service, private service, commercial houses or any other. Nothing is more distressing than to come across young members of the Bar who have got no work, who won't leave the profession, who come to the Bar Library everyday, always having a look at the wanted columns, writing to their fathers-in-law or the wife writing to her father, "Get my

husband a job." If they were to go out in search of a job, probably they will get it. But having one foot here, another foot there, the result is disheartening. When you are 25 or 28, and you cut it out, you may be able to make good elsewhere. But at the age of 35 or 40 it may become absolutely impossible with a growing family and lessening energy. Anybody may be ready to give a man of 28 a chance, but no one will give a man of 40 a chance anywhere.

I, therefore, suggest to you that though the doors of the profession are open to everyone, to every entrant—I am not in favour of putting any restriction of any kind upon entrants in the profession, it is a fine republic open to everybody—but there is no duty cast either upon the profession or upon the public or upon the Government to find employment for everyone in the profession. No use saying, well, it is true there are hundreds and thousands of young members of the Bar, nevertheless you must find work for them. I have heard suggestions—oath commissioners, arbitrators, something or other. But the number is so large that no one can provide for everybody. You know in England out of ten barristers who are called by the Inns of Court not more than two practise. The rest seek legal training because they think it will do them good in their career as journalists, or as businessmen, or in service anywhere. It is the hall-mark of a gentleman to be a member of the Bar. It gives him a certain mental training. In India almost every single individual in a university who comes out as a Law graduate says, I want to practise. Do you mean to say that this poor country can sustain and can carry this enormous load of lawyers which the university passes out in such ever-increasing volume? You have to exercise a self-restraining, self-denying ordinance yourself.

The second thing that I wish to say is this. That I say not as a lawyer but as a public man with some experience

of life and as a man who is in contact with currents of public opinion. We are now having these elections. We are looking forward to the dawn, the breaking of the day, to our own Governments. You know what will be the first demand. The first demand will be that justice should be brought to the home of every litigant, that you should have an ever-increasing number of *Panchayats* in villages for the disposal of petty litigation, civil and criminal. There would be no particular solicitude for the legal profession. I am not talking of the big cases, property cases, commercial cases, murder trials. I am talking of petty cases. This will be the demand everywhere that the burden of litigation is ruinous. You will have to take that into consideration.

The third demand will be that the system must be easier, less complex. Very recently very interesting and important articles were published in an important weekly—they were reprinted in the *Allahabad Law Journal*—about the present system of administration of civil justice. The common opinion is that it is cumbersome, it is expensive, it permits and encourages appeal after appeal. You can carry a small matter to five courts, the result being that the man who wins loses and the man who loses is ruined for ever. Nobody is going to stand it. Your popular assemblies are not going to stand that. So when you go in the profession you have to appreciate the currents of public opinion. I do not see in the future any great encouragement to the members of the legal profession, any prospective increase in litigation. I see just the opposite. Half the province is now under insolvency at the present moment because of debt legislation, debt relief, conciliation boards and arbitrations throughout the province. That is the thing to be considered.

I want now to close these observations of mine by wishing you very good luck and the best of fortunes. The

profession is a good profession though there are these inconsistencies about it. But apart from the profession, have some cause of your own. I sometimes think, I do not know what other lawyers think—it might be a mental twist of my own—that when I die, supposing I go elsewhere and there is the seat of judgment and somebody is sitting there and the question is asked, “What have you done? What did you do?” My only answer will be, “Sir, I pleaded other people’s causes.” The divine dispenser of justice may remark, “Very funny individual you are. Did you not have a cause of your own to plead?” I would say, “I had nothing to plead of my own, but only the cause of the plaintiff and the cause of the defendant. Sometimes I wanted the plaintiff to have a decree in his favour, sometimes I pleaded that the defendant should have a decree in his favour. Sometimes I attempted that the man who committed murder should get off, because there was some legal flaw.” Again the question is, “What did you do yourself?” I could only reply, “I married, multiplied, begot some children, I brought them up and got them married.” I very much fear that the final judgment may be, “Go to Hell.”

7

HOW TO ARGUE A CASE IN COURT

[In 1938-39 when I was a Minister of Justice in the U. P. Government my friend, the Editor of the *Lucknow National Herald*, came and asked me to write something for his newspaper. I pleaded dearth of suitable topics. He said, "Oh ! you write on anything you like." Struck by a passing fancy I said, "May I write on how to argue a case in a law court? Will that suit you?" And he said, "Fine." So in a rather light vein I ventured to interview myself through the writer whom I called KANAK putting two 'A's between my initials. I reproduce that article here. It was widely read at the time and in rather racy language indicates how in my opinion a case should be argued in court.]

THE EDITOR OF THE *National Herald* is a friend of mine. Indeed he is rather fond of me, and so, wishing to give me an opportunity, he said to me the other day, "Why don't you write something for the Herald? You can do so if you exert yourself." I replied that I was a villager by birth and by inclination, fond of open fields and flowing streams, and of agriculture,—people called me "Kanak" (wheat) in my Punjab home—though vicissitudes of fortune had taken me far and wide, and being a clubbable sort of man and a good listener I had met and made friends with many distinguished men and women. I could listen, I said, and also talk at a pinch but writing was not in my line. But my friend the Editor, who is wiser than myself, suggested that I could at least reduce what I heard into writing. This seemed a trifle less difficult and so I asked what about. He said, "Oh, the subject does not matter, so long as it is of human interest; why not begin with the giants of the Bar whom you may have known; there are so many of them, you know; India seems to be pretty full of them." I rather chuckled at the expression of my friend; these giants, when you meet them at close quarters, do not

appear so big after all. They move in a halo of glory in court rooms surrounded by admiring crowds and by anxious care-worn clients, but in private life they have their small human weaknesses, and some of them are very human indeed and very lovable too. That is, however, by the way. So to try my hand at writing, I set to work. I know a man who was reputed to be a success at the Bar in his time. I have known him intimately from my boyhood; I talk freely to him, and I thought I might gather something useful and interesting from his conversation. I therefore called on him one evening after dinner. It is difficult to get him in the day; he has left the Bar and betaken himself to a more hazardous calling with longer hours of work and plenty of uncertainties to boot—my friend is a rather curious individual, you see. I found him relaxed after a hard day's work and, what was more suited to my purpose, in a reminiscent mood. So I skilfully began :

“ What has happened to your note-books? ”, I asked innocently.

“ What note-books? ”, he asked in return.

“ I mean the note-books of your cases. ”

“ I never kept any, I tried once and filled 24 pages in ten years. ”

“ What, did you write your notes on loose sheets of paper?—that must have been very inconvenient. ”

“ I never made any notes, ” was his reply.

This surprised me because I have been told of massive note-books and sheaves of notes of famous lawyers, and I asked :

“ How did you prepare your cases then ? ”

“ I never prepared my cases. ”

This was too much, and I said half in anger :

“ You are laughing at me, you want me to believe you never prepared your case. ”

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"But, my dear fellow, that's the solemn truth, I never prepared my case."

"What then about your rulings and authorities; how did you manage that?"

"I never cited any," he replied, "if I could help it. I hate rulings; I hate case-law; I would fain cite from *Pickwick Papers* or Herbert's delightful *Misleading Cases*. I cited the barest minimum and I found that all sensible Judges liked that."

"But then you must have read a lot of law at home before the case came on for hearing."

"I was not eager to do that either."

"Then did your junior colleagues help you in that way—did they read up the law for you?" I persisted. I wanted to get at the bottom of this, you see.

"Yes, yes, my juniors were always very helpful, but then, you know, I talked to them and at them in such a fashion and cut them short often so abruptly that I am afraid I never could get to the end of their notes. They loved me and I terrified them, and we often broke the consultation for discussing politics and all sorts of other things."

"But you must have listened to your opponent and taken notes of his argument and prepared your reply."

"Not that either. I never took any notes of the arguments of my friend on the other side; and whenever I did, I never read them subsequently. It was utterly useless to do so. You know, as Sir Charles Russel said, the game was on the table."

"How's that, I don't quite follow."

"You know Sir Charles Russel was a very eminent Advocate of his day. He once saw one of his juniors in court writing away. He asked the junior what he was doing, and the poor devil replied, 'I am taking notes



of arguments, Sir Charles' but Russel was indignant and almost shouted, 'My dear fellow, what's the earthly use, watch the judge, the game is on the table.' I took that advice of Russel to heart and invariably followed it."

I became more and more curious and inquisitive as I continued, I thought, my searching cross-examination.

"Then, you must have probably scored in ink and pencil on the papers in your briefs and made extensive marginal notes."

"I am afraid I didn't do that either. As a matter of fact, I seldom kept a fountain-pen or red and blue pencil—things so beloved of all good lawyers. And my briefs, according to an esteemed and witty friend who is now unfortunately no more, appeared to be 'in a state of virginity.' Oh, I really think I was a very lazy fellow that way, and my laziness was almost being exposed. People thought that I never looked into my papers and I argued, so to say, by intuition, and I sometimes really thought that it would be worthwhile to score the brief at random to show, at least outwardly, that it had been opened."

"Then, I believe, you possessed a good memory and depended upon it entirely. It must have been a terrific strain to remember the facts of dozens of cases."

"Well, you are right in a way. I did read the papers and I did depend upon memory to some extent, but my effort was to forget most of what I had read or what I had heard of the case from the opposite side in court."

"You read and then wanted to forget; you are talking in enigmas or is this a paradox?"

"Not at all, it is the literal truth; you see I wanted to forget most of the rubbish, mass of irrelevant detail, which I found in my brief. That was not an easy task, I assure you. Remembering is so easy; it is the forgetting, completely brushing aside, which is so difficult."

"Then, I do think, the judge must have come to your assistance often."

"Yes, there is something in that. You see, the Judge and I always got on very well. I treated every Judge, without exception, with respect, and said or did nothing to show what I really thought of him. I asked for his guidance and invariably got it. For my part I did all that I could to lighten his task to relieve the tedium of the argument by a little honest hilarity on my part. I told him delightful stories and anecdotes and did my best to make him forget that I was an advocate for any of the parties. Sometimes, you see, in the case of particular Judges, a difficult case may really be a great strain and they stand in need of a friend to whom they can confide their difficulties in open court. I endeavoured always to supply that need, and I was, on no account and in no circumstances, wiser than my judge—and that helped considerably."

"But some judges are so short-tempered, and not disposed to listen."

"You have to take the measure of your judge—that is why, I said, the game is on the table. You have more to observe and to watch, then to read; and then I have always held the view that if a man is to be hanged, whether he is hanged after two hours' argument or two days' argument is all immaterial, both to the condemned prisoner and his advocate and that doctrine is solvent of many difficulties before short-tempered judges."

"But, I am told—I don't know, I am not a lawyer," I said, "that a short-tempered irritable judge is a great nuisance."

"Quite, sometimes—you must however make allowances. It may not be his fault at all. A judge is also a human being—his peevishness may all be due to his liver, or to his wife, or to his attempt to be pleasant and humorous and

behind a rough exterior may be heart of gold. And, my dear fellow, if truth must be told, and to do the poor man justice, it is difficult, so difficult, to suffer fools gladly. And then some judges sometimes forget the wise saying of an old master of the craft: Make up your mind quickly but disclose it slowly."

"From your talk one would gather," I observed, "that the art of advocacy consists in doing as little work as you can and in telling the judge delightful stories and then leaving it all to Providence."

"Providence does play some part in the game no doubt, but the real art lies in its apparent artlessness."

"Then how did you set about it after all—people say you had your fair share of wins."

"What I did was absurdly simple. I read all the papers at four o'clock in the morning as carefully but as rapidly as I could, and then let the case simmer in my mind for some days; and what ultimately remained in my memory was the kernel of the case—the very crux of it,—and on that I always found the case turned, whether you argued it for two days or twelve. And the great art of advocacy, in my opinion, lies in never losing sight of that crux, and holding fast to it, no matter how, like a water-lily in the pond, you swerve with the breeze here and there on all sides. This essence may be a crucial fact or legal principle, it makes no difference at all to the method."

"But what about the judge; he may think otherwise, he may be a lover of detail."

"That is possible, but I have found that the kernel, like truth, is one and indivisible—it doesn't vary with different individuals. As to details if you remember them you answer; if you don't, express astonishment at the judicial profundity, bow to judicial experience, express gratitude if the point favours you, keep silent if it doesn't, but rest

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assured that in the end we come back to the kernel of the case again and again."

I was completely baffled by this simplicity.

"Surely" I cried, "the big fat law books, myriads of precedents, judicial decisions and what not, where do they come in?"

"My dear fellow," he answered, "believe me, no one hates a law book more intensely than a judge. He curses it, may be under his breath; he doesn't like to look at the report of a judgment—other than his own. It is the weariness of flesh to him and he blesses you if you spare him as much as you can from that affliction; and as a mark of his gratitude in doubtful cases he may even give you a decree in the belief that it is only a weak case which requires the last-resort oxygen of text books and law reports. What a judge really wants is to get rid of your case—whether he decides it in your favour or against you is a matter of complete indifference to him—in the shortest possible time with the slightest possible physical and mental exertion; so if you state your case before him briefly, put your point clearly, answer his questions directly, and in difficult complicated cases keep him refreshed with your witty and homely remarks and, above all, make him feel that you are not out to make a fool of him. I verily believe that with any measure of luck, you win your case."

"And then," I said, "what about the client, what does he like?"

"Oh, my God," said my friend, "the client, I had forgotten him, he doesn't come in the picture at all, he remains in the background; it is all between you and the judge. You have to forget the client altogether. If he comes in sight, the charm is broken, the spell refuses to work, the judge becomes suspicious and your labours are all wasted. And really by mentioning the client you have



spoilt my evening. I have been trying to forget him all these years because you know desire is the root of sorrows."

And with that my friend abruptly changed the topic and we talked of other things.

These are the pearls of price which fell from my friend and which I am presenting to you, gentle reader. This is my first attempt at writing. If you get more like this, blame the Editor, don't blame me.

8

THE GAME WHERE STAKES ARE
HUMAN LIVES

I AM SOMETIMES struck by public demands for judicial enquiries whenever any complaints are made about the conduct of persons in authority. It is of course gratifying to note that a committee of enquiry presided over by a high judicial officer inspires public confidence. A public judicial enquiry is undoubtedly the most satisfactory method of investigation. All proceedings are held in public, and witnesses are open to examination and cross-examination by all parties interested, and everyone concerned gets the opportunity to put forward his version of the incident, and to vindicate himself if his own conduct or character is in any way brought into question. Nevertheless, speaking as an advocate with life-long experience of the law courts, this method of enquiry need not necessarily result in sound findings of fact by the enquiring authority. It is true that such an enquiry facilitates arrival at correct conclusions. In addition to seeing and hearing witnesses, the tribunal has the great advantage of listening to arguments of experienced counsel who bring out the strongest and the weakest points in every version put before the tribunal. But in spite of all these advantages which every judge enjoys in every case which he tries in a law court, it is the common experience of advocates that judicial conclusions on even simple questions of fact sometimes differ so violently as to cause infinite surprise to a layman. You argue an appeal, for instance, against a death sentence before a Bench of two or more judges. The whole case turns upon the



reliability of three or four witnesses, and the inferences to be drawn from the surrounding circumstances of the case, and yet we find most experienced judges reaching diametrically opposite conclusions. The faculty of forming a right judgment is really a great gift. In truth, great judges are born, not made. So many factors go to the making of a good judge—common sense, innate intelligence, a little intuition, habitual tranquillity of mind, experience of human nature and of working of the human mind, knowledge of ways and manners and habits and usages, and outlook on life of different sections of the community. Just as deficiency of any particular vitamin may cause serious deterioration in health, similarly absence of any particular quality may completely mar the efficiency or the usefulness of an otherwise competent individual as a good judge, and he may even become responsible for great judicial errors and miscarriages of justice causing incalculable injury to the life and liberty of his fellow-citizens. And if this so-called judicial enquiry is a mere secret examination of unsifted recorded material, then it may positively sometimes yield very misleading and unsatisfactory results. A judge in our courts becomes so much accustomed to a discussion of the case in open court by counsel of all parties interested who fearlessly put the whole matter before him from every conceivable angle, that without such assistance some judges almost become incapable of reaching sound conclusions. It is only long training and experience at the Bar which enable an advocate with considerable chamber practice to advise his clients on points of evidence or points of law without the assistance of an exposition of the case from an opposite point of view. It is a common saying that a judge as an adviser in chambers may be a very unsafe guide and counsellor. If you want to have unsifted evidence closely scrutinised and assessed by an impartial agency it would be

much better to submit it for the opinion of an experienced advocate at the Bar who handles in chamber advice matters everyday in his life rather than to submit it for the opinion of a judge who may possibly feel helpless in the absence of counsel to assist him.

I am tempted to make these preliminary observations because of the very grave dangers which litigants run in the law courts through divergence of judicial opinions. The reversal of judgments of an inferior court by one of superior jurisdiction is an everyday experience. Such reversal is naturally attributed to the greater judicial ability and acumen, experience and learning of the judge in the superior court. This may be all true but not rarely, on the judgment of a High Court being taken in further appeal to a still higher court, that higher court on a consideration of the two judgments before it comes to the conclusion that the judgment of the trial judge is much sounder and abler than the judgment of the High Court. Thus litigants often become the sport of judicial vagaries or differences in opinion. It is all really a matter of how a particular set of witnesses or propositions of fact and law strike a particular individual. So much may turn upon judicial idiosyncrasies.

Not only do these conflicts of judicial opinion arise on a series of appeals from one court to another, but I have gone through a much more terrible experience where a man's life literally becomes a gamble. Had his case been decided by one judge he would certainly have been hanged. But accident takes the case before another judge and he escapes not only the gallows but secures complete liberty. Let me mention here two cases, one of which—as it occurred at the very commencement of my practice at the Bar—caused me such a profound shock that it burnt itself into my mind and almost created a fear complex which coloured the whole of my professional life.



It was the hot weather of 1914 and I had just joined the Allahabad High Court Bar. One day I was sitting in court watching Charles Ross Alston open a criminal appeal before two very senior and very experienced judges of the court—Mr. Justice William Tudball and Mr. Justice Mohamed Rafiq. Alston was one of the greatest advocates I have come across in India. He was by no means a learned lawyer and his knowledge of Civil Law, I imagine, was very fragmentary. He was a leader of the criminal Bar and the way he put his case before the court was a marvel of forensic skill. He seized the vital point in the case almost by instinct, and the effect of his advocacy was much heightened by the mode of his speech and delivery. He spoke with a remarkable economy of words, but every word that he uttered was well-chosen and was spoken with the distinctness of a BBC announcer and impressed tremendously all his hearers. The case that he opened before the court was indeed a short one but the facts were rather singular.

It appeared that at the outskirts of a village there was a well, and one morning word went round that a woman with her 14 year-old daughter had fallen into it. Many people assembled and an immediate effort was made to pull them out. The girl was dead before help could reach her: the mother was, however, pulled out alive and just as she came up the well people asked her what had happened, and it was said that then and there, without the least hesitation, she pointed her finger at two men who were standing by the well-side and said: "These two men had pushed me and my daughter into the well deliberately to kill us." The Police of course soon came on the scene and after investigation the said two men were prosecuted on a charge of murder. The prosecution case was that the woman was a beggar and lived in the village with her daughter eking

out a poor miserable life. She had had some quarrel with the two accused, and that morning in a rage she had announced that they had made her life impossible and she would leave the village altogether. She had thereupon collected her scanty belongings and walked out of the village followed by the accused, and then it was alleged that as she was passing by the well they had, with the intention to kill her and her daughter, pushed both into the well. Of the actual occurrence there was no eye-witness, though there were one or two witnesses about the quarrel in the village itself.

The Sessions Judge in convicting the accused had observed in his judgment that having seen the woman in the witness box he was so deeply impressed by her straightforward demeanour that he believed every word of her testimony and he was prepared to convict the accused even on her uncorroborated evidence. When he came, however, to pass the sentence, he concluded by saying that, though he had believed the woman, he could not shut his eyes to the fact that she was the solitary witness to prove the crime, and therefore, he thought it would be safer to improve the lesser penalty for murder, namely, a sentence of transportation for life, rather than a sentence of death.

It was against this conviction that Alston had appealed. He put the case—so it appeared to me—very succinctly but with great force. He argued that the story about the quarrel was a very probable one, and it was also likely that these two men were following the woman as she was coming out of the village in rage, but he suggested that cases of angry temperamental women throwing themselves into a well were not uncommon, and it was equally possible that the woman had thrown herself and her daughter into the well in a fit of blind anger and irritation, and that when she was dragged out of the well and she saw the two accused present, she



was frightened and thought it would be better to put the blame upon them. But the two learned judges would have none of all this: they were furious with anger. I have never seen judges losing their temper so violently myself and Mr. Justice Tudball almost shouted: "Mr. Alston, your clients are brutes, beasts, abominable men. Let me tell you what they were after. They were not after the woman. They wanted to possess her daughter, and they made the life of the mother a hell and she was trying to protect her daughter from them and when she refused they deliberately wanted to kill her—kill both of them." And the Judges railed at the Sessions Judge for not passing the sentence of death. They thought the Judge had been guilty almost of a dereliction of duty. This learned Judge, I remember very well, happened to be a member of the Provincial Judicial Service and the common impression of some High Court Judges at that time was that these Indian Judicial Officers promoted as District and Sessions Judges almost at the fag-end of their service shirked passing death sentences, and this was precisely what Justice Tudball hinted at. Both the Judges over and over again expressed the view that they could not possibly allow the lesser sentence to stand. The sentence of death was the only appropriate sentence in such a horrid case. They would have, I am sure, passed that sentence straight-off but they could not do so under the law. A High Court in India has, on a criminal appeal, power, not only to dismiss the appeal, but even to enhance the sentence, but Criminal Procedure provides that when it is proposed to enhance a sentence, the accused must be personally informed and given a reasonable opportunity of showing cause against such an enhancement. This was a pure formality but it had to be gone through. The Judges, therefore, passed an order directing that notice should issue to the appellants requiring

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them to show cause why sentence of death should not be passed upon them. The accused were in prison. The notice merely had to be served upon them in jail, and it only meant an adjournment of the case for a short period.

It so happened that after about two weeks I was again sitting in another court presided over by two other Judges, Mr. Justice Chamier and Mr. Justice Piggott, both senior and experienced, and I heard the reader calling on this very appeal for hearing. I picked up my ears. Up rose the Government Advocate, Mr. Malcolmson. And he said in quite a casual tone :

“ There has been some mistake somewhere, My Lord, and this case has evidently been by some mistake put up on the list before Your Lordships. It was argued the other day completely before Court No. 2 and only the question of sentence now remains for decision. To save time, would Your Lordships direct that the case be put up before that Court ? ”

Chamier J : “ Isn't it the practice, Mr. Malcolmson, that when one Bench issues a notice of enhancement the case is put up for final disposal before another Bench ? ”

Malcolmson : “ No, My Lord, no, no. There is no such practice. It occurs everyday. The same Bench issues a notice and then disposes of the case finally. There is no such practice at all.”

Chamier J : “ Well, if there is not, I think there ought to be. Anyway, now that the case has come before us, we will hear it and dispose of it.”

The learned Judges heard the appeal and went through the evidence. As I have said, the facts were few, the witnesses were also few and within an hour they dictated a judgment that they were not satisfied that the charge of murder had been brought home to the accused and they ordered their acquittal.



All this happened in my presence and I heard the judgment with my own ears. 'I was simply petrified. I was then quite young in the profession. I stood in awe of judicial wisdom and yet there it was, a terrific gamble with two men's lives before my very eyes. This case haunted me for many a day and when I began building up a criminal practice of my own, I was almost afraid of accepting the brief of a case in which only a sentence of imprisonment had been passed. The danger of enhancement of sentence always worried me like a nightmare, and it might sound a little strange, but is nevertheless true, that the only criminal appeal which I could argue with a sense of complete security and peace of mind was an appeal against a sentence of death because in such a case there was no danger of any enhancement. Yet with all my care and precautions I was destined to undergo myself a similar ordeal. That came to pass 20 years later in 1934.

One evening a doctor, a member of the Provincial Medical Service, a handsome presentable young man, came to my chamber and told me that his family had some lands and that his father had got entangled in some agrarian dispute with his tenants, and had fired and wounded one of them, and had been convicted and sentenced to a sentence of 3 years' imprisonment, and he asked if I would take up his father's appeal. As soon as I heard of the sentence, I asked, "Anybody dead?" He replied, "Yes, the wounded man had died." My first impulse—and I indicated it—was to refuse his brief. Shooting which results in loss of life is murder and a 3 years' sentence was much too dangerous. But he looked at me imploringly and asked me at least to read the judgment of the Sessions Judge. I did so and it was plain that on his findings the Sessions Judge should have ordered a clean acquittal. The accused had pleaded the

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right of self-defence. Now the law is clear that if exposed to violence or threats of violence you may use force and even cause death but the force used should not exceed the exigencies of the situation. The Judge had found that the accused had been surrounded by his tenants who were armed with *lathis* and were threatening him with violence and the only way that the accused could protect himself was to use his gun—he had nothing else in his hand at the time—but in firing he had avoided all vital organs and had aimed low at the legs, and very likely the injury would never have proved fatal had not the wounded man out of sheer obstinacy refused to accompany the police constable to the hospital till the police inspector had himself arrived on the scene and seen the spot for himself. This had taken more than 12 hours and the man had simply bled to death. On these findings the plea of the accused that he had fired in self-defence was completely justified in law, but the Sessions Judge had rather illogically, while recognising that under the circumstances, there was a right of private defence, had held that in firing the accused had not used due care, and had, therefore, exceeded his right of private defence and was guilty of the lesser offence of culpable homicide not amounting to murder, and had sentenced him to three years' imprisonment. This judgment was, in my opinion, wholly unsustainable. I, therefore, agreed and filed the appeal. It came on for hearing almost on the last day before the court rose for the summer vacation in May, 1934 before Mr. Justice Uma Shankar Bajpai. This learned Judge had been Government Advocate for many years and had great experience of criminal matters. Along with the appeal was also put up an application made through counsel by the brother of the deceased praying for enhancement of sentence. Opening the appeal I shortly

stated the facts and submitted that on his own findings the learned Sessions Judge should have recorded a verdict of acquittal. I read the judgment which was a long one and after some short discussion the learned Judge expressed his agreement with my submissions and called on the Government Advocate for reply. The Government Advocate requested the learned Judge to allow his learned friend Mr. Misrilal Chaturvedi who had studied the case very thoroughly in connection with the application for enhancement, to put the case for the prosecution. And thereupon, Mr. Chaturvedi argued the case at length. He did it with great ingenuity and skill and completely turned the tables upon me by arguing that the Judge's findings were all wrong. There was no question of the accused being surrounded by a mob of threatening tenants and being in danger of a brutal assault on him. As a matter of fact, the post-mortem examination and the direction of the wound and other evidence showed that the shot had been fired at long range at the deceased from behind when he was very likely actually flying away from the accused. Mr. Justice Bajpai was greatly impressed by this argument. He went through the papers closely and indicated quite plainly that he thought Mr. Chaturvedi was right.

The luncheon recess was approaching and he turned to me and said—he was fond of English poetry—"Well, Dr. Katju, this is pretty serious. I think Mr. Chaturvedi has got it all right and if that is so, well, you know, there is blood calling for vengeance. I can't possibly allow this sentence to stand as it is." I kept mum with Mr. Alston's figure rising before me and I almost cursed myself for accepting this brief. The Court adjourned for half an hour. The accused was present in court—a tall stalwart man. I took him aside and told him that the outlook was pretty bleak and that so far as I could see he should

consider himself lucky if he were to escape with a mere three years. I said that the Judge seemed determined to issue a notice for enhancement and asked him whether he was prepared to face it. "It might be very risky," I said, "If you allow me I would try my best to soften the Judge as best as I can and to persuade him to dismiss the appeal and take no further action in the matter." The accused—I see him before me now standing crest-fallen—was frightened and after a pause he said, "Sir, you please do what you think best for me. I shall be prepared to do the three years. It is my fate." And then within a few moments the court reassembled and immediately after taking his seat Mr. Justice Bajpai turned to me, "Dr. Katju, I have been thinking over this case during the recess and I have now made up my mind. I think the notice of enhancement must go. I can't possibly allow this sentence to stand. It's so grossly inadequate." He was very emphatic indeed: but nevertheless I tried to cajole him a little and said that the case had already occupied about two days and if a notice of enhancement would issue, it would have to be heard all over again not by a single Judge but under the Rules of the Court, by a Bench of two Judges, and there would be so much extra expenditure of public time. Would he not think that the interests of justice would be served by letting the case stand where it did and not taking further action. But Justice Bajpai was adamant. He said something more about blood calling for vengeance and dictated his order. I looked the very picture of misery, and very likely he was rather touched at my dejected mien and suddenly said, "Well, Dr. Katju, in the normal course this case would have come before me sitting with my brother Kisch during the long vacation in about six weeks' time, but that would possibly spoil your holiday. So I am going to say in my order

that the case should be put up before a Bench of two Judges of which I am not a member. That would enable you to go out of Allahabad for the whole of the vacation, and you can argue it after the re-opening of the court.

I was duly thankful for this very small mercy, so it appeared at the time. I had never experienced such a shock in my life before, and I confess that though I left Allahabad for the seaside at Puri, nevertheless for days and days the memory of this enhancement notice poisoned my holiday.

On the re-opening of the court in August the appeal came on for hearing before Mr. Justice Harries and Mr. Justice Richpal Singh. (Mr. Justice Harries is now the Chief Justice of the Calcutta High Court). Against me were arrayed the same Government Advocate and Mr. Chaturvedi. I opened the case very much on the same lines and after stating the facts, I placed the judgment before the learned Judges at length. As soon as I had finished, Mr. Justice Harries observed, "Of course, it's all wrong. The conviction is wrong. How does this case come before us? It's only a sentence of 3 years. It should have been disposed of by a single Judge."

I answered rather diplomatically that Mr. Justice Bajpai had issued a notice of enhancement thinking that if the Judges came to the conclusion that the conviction was right the sentence might strike one as grossly inadequate. But the learned Judges were very much dissatisfied and said so, "This case is absolutely plain. The conviction is all wrong." And they almost indicated that the enhancement notice had led to a waste of judicial time. I sat down pretty quickly. My two learned friends were very much taken aback. The Government Advocate struggled for hours but made no impression, and it was with very ill grace that the learned Judges would allow Mr. Chaturvedi

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to argue the case at all, and having done so, they almost shut him up within ten minutes and the result was a judgment for clean acquittal. "All's well that ends well" is the well-known saying. But before it ends well what terrible anguish and mental pain it may cause to an innocent man and his counsel like myself ! So imperfect is human justice and so violently divergent are the reactions of different individuals to the same mass of oral testimony and circumstantial evidence.

Let me conclude this rather painful narrative by a pleasing note and recount an episode in the judicial history of the Allahabad High Court which, though it occurred 34 years ago, is as fresh before my mind's eyes as if it had happened yesterday.

Sir Henry Richards was then the Chief Justice of the Allahabad High Court and his second seniormost Puisne Judge was Sir Promodacharan Banerjee, a Judge of profound learning and ability and experience, who adorned the Allahabad Bench for over 32 years. Sir Promodacharan was, however, considered, by the Bar as a rather "severe" Judge in criminal matters, or to use a vulgar expression—"a convicting Judge." Sir Henry Richards was, on the other hand, in their view, a good Judge, not readily disposed to accept the police version in every criminal case. You know, it is all a question of personal temperament. Sir Henry Richards and Sir Promodacharan Banerjee often sat together and one afternoon while they were hearing an appeal against a death sentence on a trial for murder, I happened to walk into their court. I did not know what the facts of the case were but I noticed that the two Judges had ceased to be fellow-travellers in the same direction. Instead of talking to each other they were talking at each other through counsel. When one of them put a particular question—an inconvenient question—to counsel, the other

Judge would break in by saying, "Probably, Mr..... your answer to this would be.....," and so on. And soon I noticed, they ceased to be even on speaking terms with each other, and each was quite ostentatiously sitting up in his chair and looking round elsewhere. Arguments came to an end and it was perfectly obvious that the two learned Judges had reached divergent conclusions and that there were going to be two separate judgments. The Chief Justice, being the senior Judge, began first, and after a very critical examination of the prosecution case ended by saying that it would be quite unsafe to uphold the conviction and therefore, he would allow the appeal and acquit the accused. Then began Sir Promodacharan, and the whole tenor of his judgment was—so it seemed to all of us—adverse to the accused. He attempted to answer many of the comments of the Chief Justice and we all thought that the two Judges having differed, the case would have to be reargued before a third Judge for final decision. But lo and behold ! to the surprise of everybody Sir Promodacharan was saying—"However inasmuch as the Hon'ble Chief Justice has come to a different conclusion in favour of the accused, I am not prepared to dissent. I, therefore, agree that the appeal should be allowed." Everybody present in court was electrified, the most being Sir Henry himself. He could not believe his ears. Throughout the delivery of that judgment he had been sitting deep in thought with his eyes half-closed, but as soon as he began hearing that concluding sentence, he sat up. His face was suffused with blood. He simply beamed with joy and almost looked like a blushing bride. And then we saw him rising from his chair, and turning towards his brother Judge, his face wreathed in smiles, he bowed to him in a most courtly and charming manner and thanked him warmly. It was the most pleasant scene that

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I have ever seen in court. And I thought to myself then, and I have all these years held tenaciously the view, that Sir Promodacharan had done the right thing. It would be monstrous for one Judge to say that he would hang the accused when he found that his brother Judge was in favour of an acquittal. At the lowest he should say to himself that the case was not free from doubt and the accused was entitled to the benefit of that doubt. But there have been Judges who have met this point of view by saying that the doubt must be the Judge's own personal doubt, and it should arise unaided in his own breast. If he is able to come to a clear conclusion himself, then the fact that hundred other Judges have taken an opposite view of the case is an absolutely irrelevant circumstance which should not affect his own judgment in the least. He must express it and give effect to it. Sir Promodacharan Banerjee, wise as he was, did not share such an obstinate and inhumane view of his own infallibility.

9

THE UNEXPECTED ALWAYS HAPPENS

AN ADVOCATE IN THE law courts has got a great advantage over his brethren in the other learned and technical professions. Their life somehow seems to fall into a groove and outside their own professional interests their contacts with the outside world become formal and slender, and their knowledge of human nature a little circumscribed. But an advocate by the very nature of his calling comes into the closest touch with every section of the community, and often sees human nature in the raw. Into a law court somehow or other people of every description and vocation in life seem to drift almost as inevitably as a river flows directly or indirectly into the sea. No one can, so it would appear, escape a law court, and the advocate has to handle them all, and to do so efficiently, not only does he require skill and experience, but also a great aptitude and kindliness of heart for comforting others in anguish and distress. It is a mistaken notion, widely prevalent though it may be, that the sole concern of an advocate is to earn his fee. He has of course to make his living, but wide experience has shown that in a large number of cases he pays for his fee not only by his advocacy in the court, but also by genuinely sharing the joys and sorrows of his clients. Anxiety not only to win the case but also to promote their welfare and happiness often makes his days and nights laborious and wearisome.

A life in the law courts is in many ways a liberal education. While you come across rogues and disreputable persons, and you may even be called upon to argue for the shady side of a transaction, somehow much depends upon

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the personal character of an advocate and his reputation among his fellow-citizens. As water seeks its own level so do litigants flock to advocates who, they think, sympathise with their mode of behaviour and outlook on life. Fortunately if an advocate acquires a reputation for endeavouring to walk the middle path indicated by Gautama Buddha, more likely than not, only those would come to him for advice and assistance who are similarly inclined, and thus the advocate's progress in life would become easy and not much of a torture. Fortune has favoured me with clients to whom I have bowed in reverence, so great was their humanity and good nature, integrity of character and affectionate disposition. For instance, as I am writing these lines, comes before my mind's eye the figure of a very simple, unsophisticated, kind-hearted individual who was spending his time, energy and money in prosecution of a case on behalf of a young widow. And who was she? She was not related to him in the remotest degree. His only daughter had died after a brief married life and had left no issue. Her husband had married again, and he also died a few years later. The young widow was helpless and alone in the world, without parents and any relations of her own. She was soon involved in a heavy litigation with her husband's brother, and in her predicament, had come forward my friend to her rescue. I was a bit surprised and probably indicated it, because he once casually said: "Panditji, who else should help this woman except myself. She has now stepped into the place of my daughter and I am only doing my duty by her." And he said this in such a simple unaffected manner that I was deeply moved. I do not know—probably such incidents occur in other countries and in other communities also—but this was to my mind an example of the Hindu tradition and Hindu way of life at its best and highest.

Litigation is a great game. Criminal litigation is short and swift and dramatic in its intensity. It is just like a horse race or a football game, with the race finished in a few minutes, and the game within an hour. Civil litigation on the other hand is as spacious and leisurely as a five-day Cricket Test Match. Then again, I do not know why—it seems so unnatural—but people do take more pains and spend more money in acquiring and defending their rights to property through the law courts, than even saving their life from disease, or from danger of loss of liberty and imprisonment. Watching the progress of a slow-moving civil case is sometimes a fascinating experience. War is said to be litigation between nations. Civil litigation may well be styled as war between private parties, and just as smokescreens, camouflages, spreading of false rumours and misleading the enemy in diverse ways are considered to be perfectly justified in warfare so private parties think that in carrying on their own little war in the law courts all such methods, permissible to Generals in command of armies, are also open to them in the conduct of their campaigns. It is true that talents and temperaments vary, so do unscrupulous methods in degrees of unscrupulousness, and folk, honest and decent in private life, may not relish resorting to questionable tactics readily, but in some shape or other everybody is ready or feels compelled to protect himself and to further his own interests in every way. When once it is war, well it is war, and all is fair in love and war.

My experience mostly lay in the appellate courts where I had to deal with closed records. How that record should be filed, what evidence should be adduced, was a matter for consideration in the trial courts. But even in the High Court on appeal it was amusing sometimes to watch the working of a litigant's mind. Astrology often proved the great soothing syrup to the afflicted ones. Indeed I have known of cases

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where astrologers were consulted, and priests employed, to ensure both my physical as well as mental health so that I should be on the top of my form when the case came on for hearing. And then there was the anxiety of the litigants to ensure that their cases were posted for hearing before good Judges: and as the date of hearing approached anxious enquiries were made into the antecedents of different Judges, about their temperaments and characteristics, and fads and idiosyncrasies, whether they were patient or impatient by disposition, whether they liked elaborate arguments or not—in other words, whether they suffered bores gladly,—and whether they liked or abhorred legal subtleties. Indeed the enquiry into a Judge's habits and behaviour on the Bench, if I may say so, without impertinence, was very much like the enquiry which race-goers make into the previous record and genealogy of every horse in the field. I remember two cases of this kind, so amusing both in their commencement as well as in their termination, and so close was in them the repetition of history after an interval of 20 years, that their recollection still causes me some merriment, and their narrative may be of some interest to my readers.

It was the year 1925 or thereabouts. My client was affectionately called by all his townsmen—he was very popular—as the Compounder and I also knew him by no other name. He was a widower, and when time came, gave away his only daughter in marriage to an eligible youngman, and thereby himself married an expensive litigation. He had started his life in a medical dispensary as a compounder and having laid by some money, had started late in life a small druggist shop, and to him in his old age this newly-wedded wife—this litigation—proved exceedingly burdensome. His son-in-law—let me call him Fakir Chand—had lost his father in his infancy. The father had a joint business with his brothers and some joint



property, and Fakir Chand succeeded therein to his father's share. On his father's death the uncles wanted to get rid of him, and it was alleged that they induced Fakir Chand's mother to agree to a partition and by fraud and concealment settled all accounts on terms exceedingly detrimental to Fakir Chand. This partition, however, had been acted upon and Fakir Chand and his mother had dropped out of the business and had been all along living separately. The compounder, naturally much interested in his daughter's well-being, took legal advice, and thereafter instituted a suit for cancellation of the family settlement and retaking of family accounts afresh. The case of fraud almost entirely turned upon an examination of voluminous account books and there was of course a good deal of oral testimony also. After a lengthy trial the Judge held that no fraud had been proved and dismissed the suit. There was an appeal to the Allahabad High Court and I was briefed for the appellant, Fakir Chand. As soon as the appeal record was printed the compounder who, I imagine, had invested all his savings in the prosecution of this litigation, acting upon the general impression in India that to make the advocates prepare their cases diligently, it is necessary that their clients should sit upon them, came over to Allahabad and settled down in a rented house. He began to visit my office almost five days a week, his invariable request every time being whether he could do anything to assist me in the preparation of my arguments. He was obviously under the stress of great anxiety and with a view to preventing a nervous breakdown I always invented some job for him, which mostly consisted in his compiling all manner of abstracts of accounts having the remotest bearing on the case. One day the compounder asked me as to which two would be the most suitable Judges out of the nine or ten then on the Allahabad High Court Bench to hear his appeal.

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Such a question has been put to me hundreds of times by hundreds of clients and I have always invariably declined to answer it. It is unfair to speculate upon the working of the judicial mind. At first I tried to choke off my friend, the compounder, by saying that all Judges were alike and everyone was anxious to do justice. But he would not take a dismissal in this summary fashion and reiterated his request over and over again, and ultimately I told him that his case turned mainly upon a detailed consideration of fairly complicated accounts of the family business firm, and some Judges were, so to say, account-minded and simply loved account books, while others loathed their very sight, and I mentioned some names falling in the first category and there, for the time being, the matter rested. In this way passed four months and then arrived the great day fixed for the hearing of the appeal. The afternoon previous as I was sitting in my chamber in came the compounder almost howling "I am dead, I am ruined, I am finished," and it was with some difficulty that I could make him sit down and tell me what it was all about. "Doctor Sahib," he said, "what shall I do? I have been cheated. They are all great rogues."

"Who are the great rogues?"

"The officials in the High Court Office. I paid them money and it was clearly settled that my appeal would be put up for hearing before Mr. Justice A and Mr. Justice B (two of the account-minded Judges mentioned by me) but just now I am coming straight from the High Court. These very people have now received Rs. 100 from the other side and upset the previous arrangement, and the appeal is now coming up for hearing before Justice Piggott and Justice Walsh and everybody says, and you said too that day, that Justice Walsh hates account books like the devil, and is terribly impatient, and now I am finished," and then



recommenced his lamentations. He wept and wept, and would not be comforted. Truth to tell I was myself a little worried because definitely Justice Walsh, and to a lesser degree Justice Piggott also, were not ideal Judges for the hearing of this particular appeal. But my immediate task was to restore the compounder to some sort of sanity. So I asked him to keep his chin up and be brave and trust in providence. He departed still very woeful.

The next morning I found the appeal entered first on the list before Justices Piggott and Walsh. As I was myself engaged in arguing a part-heard case before another Bench, I tried to secure an adjournment, but when I entered the court room I found an array of my learned friends engaged on the other side, and as soon as I made my request, up they rose almost *en masse* in objection. You see just as I was anxious to avoid that particular Bench, so were they equally eager to have the appeal heard by it, and it so happened that Justice Walsh had not had any first appeal posted before him for many many months, and now that one had come before him he was rather keen to hear it himself just for a change. So I was told that one of my colleagues might open the appeal and the Court would permit me to continue the argument later as soon as I was free to do so. There was no help and the hearing began. I came back into Court after about three hours and found the atmosphere very frigid indeed. I fear even many advocates don't realise how divergent and exclusive are the paths to reach the heart, the mind and intellect of different judges. There is nothing like a beaten track or a firm settled road about it. Just like a maiden each Judge has to be wooed and won in a distinctive way of his own liking. Justice Walsh was a Judge (I had worked before him for many years) who hated accounts and the dry-as-dust argument based on accounts. Indeed he hated the reading of all

evidence, oral or documentary. He was accustomed to listening and to talking. The other learned Judge was not also averse to such a procedure. Now this technique of arguing a case by talking about it without any elaborate reference to papers looks very simple, but is a ticklish business; it requires tact and some skill. You have to be completely master of your brief and to be absolutely accurate about your facts. Facts are sacred, comment is free. Many advocates do not like this mode of advocacy of a case by merely talking about it. They continuously want to reinforce their argument by reading the evidence at length, and hence arise difficulties and complications and scenes before judges like Justice Walsh. My learned colleague had overlooked this aspect of the matter and had dived deep into the record, and when I started my argument it took me some little time to switch on to the more persuasive method. I preferred it myself because it is short and it saves time, and you can make your argument intelligible and interesting and less boring, both to yourself and to your Judge. So when the Court adjourned for the day we dispersed in an atmosphere of comparative cordiality.

The next morning when I had argued for an hour or two Justice Walsh quite suddenly broke in with :

" Dr. Katju, the way that you are putting the case makes it appear to be a very simple one and there would seem to be no answer to it. Why has the lower Court decided it against you?"

K.N.K.—" It is difficult to say, My Lord. Your Lordship will no doubt read the judgment and I do not propose to cast aspersions of any kind on the learned Judge. It would not be proper to do so, but one reason possibly may be that there had been some incidents in course of the trial and my client had actually felt compelled to apply for a transfer of the case from the court of this learned Judge."



Walsh J.—“ What, you applied for transfer ? To whom ? ”

K.N.K.—“ To the High Court.”

Walsh J.—“ What happened to the transfer application ? ”

K.N.K.—“ It was dismissed, My Lord.”

Walsh J.—“ By Whom ? ”

K.N.K.—“ By Your Lordship.”

And having anticipated the possibility of such a contingency arising and the useful results it might yield, I had already asked the Court Reader to send for the transfer application file from the Record Room, and I now beckoned to him to hand it up to Justice Walsh. He read his own order and read my client's sworn statement in support of his application in which many complaints had been made against the procedure adopted by the trial judge, but said nothing. After reading the file, however, I noticed that Justice Walsh became very thoughtful and receptive, and indeed co-operative with me in my argument. The most difficult part of my case was the evidence of my client Fakir Chand's mother. Under the stress of cross-examination she had made many damaging admissions but the cross-examination before a Commissioner had been a very lengthy one. I had, before concluding my argument, to explain away these admissions and therefore to refer to the mother's evidence and deal with it. As luck would have it, the cross-examining counsel had at the very beginning of the cross-examination, I forget why, put this lady a question,—“ Are you suffering from elephantiasis in the leg ? ” I read this question and paused and said that it seemed hardly relevant. To my surprise Justice Piggott, uniformly a very quiet and courteous gentleman, suddenly flared up, “ Improper, it is a scandalous question, disgraceful, and the only way in which one can stop such pernicious

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cross-examination of *pardah* ladies before Commissioners is to refuse to read the deposition," and with a bang he shut up the paper book, and Justice Walsh, my co-operative friend, quietly, with a twinkle in his eye, signalled me to pass on. Nothing loath, I dropped the mother's deposition like a hot potato, and, believe it or not, throughout the hearing of that appeal so violent was Justice Piggott's mood that not a line of her deposition was read and all her damaging admissions simply evaporated to nothingness as if by magic. I sat down soon afterwards and then came the turn of my esteemed friend on the opposite side, B. E. O'Connor, a great leader of the Allahabad Bar. He commenced and when he had proceeded for some time and was, I think, relying upon some finding of the trial Judge, Justice Walsh burst forth: "Let me tell you, Mr. O'Connor, what I think about your case. I think you had the Judge in your pocket." After this there was really not much to be said.

The argument lingered and languished for another day or so, but to no purpose. Justice Walsh had finished the case by one stroke. Fakir Chand got a decree and over a lakh, I think nearly two lakhs, as a result of that litigation. And throughout the hearing nobody looked into the accounts. All our labours, and poor compounder's abstracts, were wasted.

Twenty years later on a Tuesday morning in February, 1945, history repeated itself on the platform of the Lahore railway station on the arrival of the Frontier Mail from Delhi. My client, whose appeal I was to argue in the Lahore High Court that very morning within an hour was there to receive me, but I found him almost a broken man in tears. Normally he is a talkative individual of a somewhat sanguine disposition, but there he stood before me, grief personified. As soon as I alighted from my

compartment he said very much in the tones of my friend, the compounder—"Doctor Sahib, it is all over; I am doomed and failure awaits me. My appeal is bound to be dismissed." I naturally enquired about the reason and then he told that he had come four days in advance to see to it that his appeal was posted before a proper Bench, but the opposite party had had the better of him in tactics, and late the previous evening he had been informed that the appeal was to be heard by Justice Beckett and another Judge, and then he continued—"I know Justice Beckett by reputation very well. He was a District Judge at Delhi for three years and he never allowed an appeal, and that, I hear, has been his record in the Lahore High Court also. He is a great 'dismissing' Judge and is awfully impatient. He never listens to anybody, is very obstinate with an imperious temper, and he dominates his brother Judge. And it so happens that his colleague today is a very junior Judge, junior to him in the Indian Civil Service also, and a very quiet man, and he would not be able to muster courage to say even one single word in opposition to Justice Beckett's views or even to speak at all. So, Doctor Sahib, it is no use, it is all over. It is all my *kismet*." And he again broke down in tears. This reminded me of the compounder all over again, but I had not then many minutes even to comfort him as we had to drive straight to the High Court, and time was pressing.

The case which seemingly began so inauspiciously was in many ways in my long practice a most interesting one, though also exceedingly painful. To me as a lawyer it was fascinating in its legal aspects. Just as a patient who presents remarkable features is interesting to a physician or a surgeon from the professional point of view—a beautiful typhoid or a wonderful brain abscess—so was this case inasmuch as it raised a difficult point of Hindu law relating

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to Hindu joint families in its purest form uncomplicated by any extraneous circumstances. It was painful because it was a family dispute between a father and his son, my client being the son. I never saw the father then or afterwards, but I have always held him ever since in the highest esteem. I only wish that we had many persons like him in this country. With infinite resource and initiative and industry he had started life literally from the bottom of the ladder, with nothing in the world, as a hawker in the streets with a bundle on his back, selling cloth from house to house and earning a small pittance for his livelihood; and from that humble beginning he had slowly built up a small cloth and tailoring and drapery business and later with his savings he opened a cycle repair shop. And then came the World War I and the cycle business expanded and flourished greatly, and he prospered and became a millionaire. While he was still a hawker, my client, the son, was born to him. There was no question of his giving the son any good education. As soon as the child grew up into a young boy of eleven, from 1902 he began to assist the father in the business, and this continued right up to 1937. He and his younger brother and a sister were all brought up by the father and duly married, and they had children of their own; and the marriages of these grand children were also celebrated by the old man in proper style. Then arose the question of the status of these two sons in regard to all the wealth and property in the family. The father claimed that it was all his personal earning and the sons were merely salaried servants. He had brought them up and their families, just as a Hindu father does, out of affection. They had no legal right whatsoever in the property. My client, the son, on the other hand claimed that whatever might have been the legal position in the beginning, he had from his boyhood assisted the father to the best of his ability

in the conduct of the family business and was associated to the extent of his capacity in building up the edifice of family fortunes. And the father having willingly so associated his sons, all the acquired property must be deemed to be the joint property of the joint family consisting of the father and his two sons. The father, however, was a man of masterful temperament given to brow-beating his children. The second son he found more pliable, and when he put forward a similar claim, he dismissed him from the business and turned him out of the family. But subsequently there was a reconciliation on terms humiliating to the son, who accepted the position of an employee. Two years later the father tried to dispose of the elder son in the same way. Him, too, he dismissed and he revoked with ostentatious publicity his authority to act for the cycle business. But the elder son was of firmer mettle than his younger brother and did not submit to the father's arbitrary action but commenced a suit to assert his rights.

This suit was instituted and tried in the court of the Senior Subordinate Judge at Delhi. It aroused great interest in the brotherhood and the business community. Masses of family account books were produced in evidence and very many witnesses too. Both the father and the son gave evidence and naturally a great deal turned upon who was speaking the truth. The trial Judge disbelieved the son's case and dismissed his suit for joint possession. Hence this appeal before the Lahore High Court. My client, having worked for years in business, both at Delhi and later at a branch shop in Bombay, was quite aware of the important part which the account books played in the case, and inasmuch as the record was a very bulky one (the printed record occupied over 800 pages), it was obvious that the case required very patient hearing on the part of the Judges. Sir Tej Bahadur Sapru, who was opposing me on

behalf of the father, had estimated three weeks as the length of the hearing.

From what I heard of Justice Beckett's temperament, both from my client and from my friends of the Lahore Bar, I thought that he was a replica, so to say, of Justice Walsh of the Allahabad High Court. He was evidently very averse to perusing papers and might be amenable to the technique of argument by talking. During the last 20 years I had also on my own part perfected this technique as much as I could, and adopted it on this occasion. So I just talked on as interestingly as I could, summarising evidence, both oral and documentary, in my own way, embodying my view of the case and troubling the learned Judges as little as I possibly could with any reference to the printed record. I had to deal with the father's evidence, but speaking quite truthfully, as I had begun to entertain a high respect for him, I didn't want to be unkind to him. Indeed, I had attempted in my own way to induce my client, the son, to come to an amicable arrangement. After all he was fighting with his own father, not a proper thing to do, but unfortunately sometimes these family disputes are intractable and from what the son told me of the various incidents in the family circle, a compromise appeared to be a forlorn hope. I mention this by the way to show that I had not the heart to comment severely on the father's evidence, and then again under-statement often pays greatly in the law courts. So, before reading portions of the father's evidence, I said that I did not propose to comment upon it or criticise it in the usual manner. I would just read it and leave it there for the consideration of the court. He was after all my client's own father. The only thing that I would say, I added, was that he had been "somewhat economical of the truth." The Judges were fairly quiet but receptive, and I sat down very early on

the third day of the argument. Then came Sir Tej Bahadur Sapru's turn. When he had argued for over two hours, he had occasion to refer to his client, the father's testimony, whom the trial Judge had believed implicitly as a truthful witness, and he naturally relied upon that finding. And then suddenly Justice Beckett broke out: "Sir Tej Bahadur Sapru, let me tell you quite plainly, I think your client is the biggest liar that I have come across." That finished the case. Sir Tej Bahadur carried on the argument with great difficulty for another day, but there was really no more to be said, and on the fourth day at the end Justice Beckett announced that they would reserve judgment, but he added that inasmuch as counsel had come from outside, their Lordships thought it proper to declare that they would allow the appeal and decree the suit with costs. The way in which my client in the court corridor lifted up his hands and poured forth his blessings on the head of Justice Beckett and sang his praises was a sight for the gods. For him in Justice Beckett verily "a Daniel had come to judgment."

N.B.—The High Court judgment was confirmed on appeal to the King in Council. Interested lawyer readers will find the Privy Council judgment in the 1948 Law Reports.

10

SHERLOCK HOLMES IN INDIA

*I. The Story of a Spurious Child**

SHERLOCK HOLMES has become a household word in the entire English-speaking—I should say English-knowing—world. Like millions I became a worshipper at his shrine half a century ago. As a college student in 1900-07, I was fascinated by that personality and Watson made millions like me forget that Sherlock Holmes was no living human being but the creation of the brain and mind of a man of extraordinary talents with a keen penetrating intellect and analytical skill. What a wonderful story-teller was Conan Doyle ! with a vast number of enchanted readers how I wished often to see those untidy rooms in Baker Street, the scene of so much drama involving all—from princes to peasants. Even now I remember everything about Sherlock Holmes, his tall gaunt figure, his penetrating eyes, his utmost concentration in moments of crisis, his far-away look, his analysis of the clues leading to the solution of a seemingly insoluble mystery, and I profited exceedingly by his specialised knowledge, by his processes of reasoning, by his instructive and pithy remarks about faculties of observations and deduction. Reading of those wonderful series of stories, the Adventures, the Memoirs, the Return of Sherlock Holmes, has been to me along with tens of millions, a liberal education, has made us see more of life than we would otherwise have done, and to walk through our daily adventures with an observant eye and discerning

* Written in 1947.

vision. Sherlock Holmes has added much charm and enjoyment, zest and keenness to our normal lives.

During the course of an extensive practice in the Law Courts time and again has the old adage been proved : Truth is stranger than fiction. Like Watson, I have note-books filled with cases which presented features, baffling in their combination and in their mystery. The real truth was known only to master minds behind the scenes in the legal drama, and in Court the Judge and Counsel were confronted with well-planned conspiracies, a mass of lying witnesses and false and fabricated documents. Truth was buried knee-deep in accumulated falsehood. To disinter the almost suffocated-to-death truth from the heaps of rubbish cast over it was often no easy task, and not seldom the lessons learned at the feet of the great ' reasoner ' came to my rescue. Often and often to my perplexities I applied the rules which Sherlock Holmes used to expound to the faithful Watson, and not seldom did the key, to my intense delight, unlock the mystery and expose the truth to the gaze of admiring spectators. On such occasions I regarded it as a pious duty to acknowledge my debt of gratitude to my unrivalled master and this habit of mine became so well-known to Judges that in cases of exceptional intricacy, one particular Judge of great eminence and experience used to enquire whether I had drawn on my well of knowledge for inspiration.

As I have said, my note-book contains references to numerous cases—both civil and criminal—which found their way into the Law Courts, and it has occurred to me that some of these may, in recapitulation, be of interest to my readers and they might feel and share some of the intense excitement which I experienced at the time.

Let me take here one case in which just one circumstance led to the exposure of the fraud. A Hindu Zeminder in

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Mainpuri, a rural district in the United Provinces, died leaving his wife and an only daughter and a brother. There were the usual disputes about the inheritance between the widow and the brother and ultimately it was decided that the two brothers had lived separately from each other and that the widow was accordingly entitled to succeed. She got into possession and, apprehending further trouble from her brother-in-law, after her death, thought it right to transfer all her property to her daughter in her own life-time. This she did and conveyed immediate possession to the daughter too. The young girl accordingly became a prize match. She was married in another family of equal standing in the neighbouring Etah district. Her husband was a youth reading in school. This girl, it was said, 17 years old, gave birth to a son and then died on the eleventh day of delivery. Now, under the Hindu law the position was this: if the daughter left a son, her father's property would devolve on the son absolutely. If she died sonless (that is, either she never gave birth to any son or, if she did, the son did not survive her on her death), then the property would not go to the husband but would revert back to the girl's mother for her life and on the death of the mother, to the girl's father's brother. Therefore, the birth of a son and his survival on his mother's death became matters of vital importance to the two families. If there was a son, the husband and his own family would enjoy the property, which was considerable. If there was none born and surviving, then the husband's family would be deprived of the property at once and it would revert to the mother forthwith. Let me also add, under the Hindu law if the son survived his mother, no matter how long, he would become the absolute owner of the property and on his death (even a few minutes after the death of his mother) it would devolve on his father and not revert to his mother's people.

The inevitable dispute ensued. The husband was, as I have said, a mere boy. His elder brother was in charge of the legal proceedings, and an application was made on behalf of the infant praying for entry of his name in the official revenue registers in respect of the properties of his mother. This was contested on behalf of the old lady, the girl's mother. An application was put in on her behalf, in which it was stated that her daughter had died without leaving any issue at all, that the son put forward was a spurious child, and she prayed for a record in her favour. It so happened that during the pendency of these administrative proceedings the mother died and the heir became her husband's brother, to whom I have already referred, and the contest now was directly between the uncle and the alleged son of the girl. The revenue officers having decided in favour of the infant, the uncle commenced a suit in the civil court for a declaration that the child was not the child of his niece; that she had as a matter of fact never even conceived and had never given birth to any child at all; and that he was entitled to the property. This was, of course, denied on the part of the son and the issue was thereupon joined.

The whole story ending with the death of the girl was stated in its entirety by her elder brother-in-law (let us call him Ramchander-Singh). It was direct and precise and well-documented and was supported by a mass of details. The girl, it was said, was of delicate constitution and as this was going to be her first confinement, a doctor, who saw her for some minor ailment, advised that it was desirable that she should be sent to some maternity hospital. The nearest hospital was in Fatehgarh and one had to go from the home village to a railway station called Ganj Dundwara to catch the train for Fatehgarh. The lady doctor in charge of the well-known Women's Hospital at Fatehgarh

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was approached and agreed to attend to the case. When the time drew near, the family consisting of the expectant mother, her mother-in-law and Ramchander Singh started from the village on bullock carts for Ganj Dundwara. On the way, however, she was seized with pains and by the time that the party reached Ganj Dundwara it was obvious that she was unfit to travel further. Ramchander Singh, thereupon, went into the town to secure accommodation and the school headmaster, a former acquaintance, kindly offered to give the party shelter in the hostel. There, 24 hours later, a male child was born. The birth was reported to the town authorities and was duly recorded in the Official Birth Registers with full specifications. Ramchander Singh informed his old father, who was at home, of the glad tidings and the old gentleman came over to Ganj. The family decided to remain at Ganj for eleven days. The usual ceremonies following the birth of a male child were all duly observed. It was necessary to fire guns to scare away the evil spirits. Ramchander Singh went to Fatehgarh and bought some blank cartridges for the purpose, and the ammunition dealer and the ticket inspector gave valuable evidence as to the purpose for which the purchase was then stated to have been made. The Pandit who prepared the horoscope of the child was produced with that document. Sweetmeats were distributed to the boys and girls reading in the school and the headmaster supported that fact verbally and by reference to a report which he had made on the occasion to his superior authorities referring to the sum which he had received from Ramchander Singh for the distribution of sweets. People who took part in the performance of all other ceremonies were produced. The young father was away in school. When he heard the news he bashfully asked the teacher for leave of absence, and on being pressed about the reason for his going, he



informed the teacher shyly of the birth of a son to him. The girl, as I have said, was of slight built and delicate health, and it was found that she was unable to suckle the child owing to absence of milk. This caused anxiety to the grandmother and she asked her son Ramchander Singh to do something about it. Ramchander Singh had to go on some legal business to Mainpuri and in the evening he casually mentioned the particular difficulty in which the family was placed to a legal practitioner, who was the lawyer as well as a friend of the family. This gentleman suggested that the best course would be to employ a wet nurse, and to secure one the most suitable method would be to advertise for one in a daily English newspaper, the "Leader" of Allahabad. Ramchander Singh agreed, and on his request the lawyer at once drafted an advertisement:

"Wanted a wet nurse for a baby 15-20 days old.
Apply to Ramchander Singh, Barauli District,
Etah."

This advertisement was sent with a money order of Rs. 5 to the "Leader," and it was duly published but only once, in that newspaper. Ramchander Singh deposed in his evidence that there was only one insertion but no wet nurse was employed, an aunt being found useful for the purpose.

To continue the story, everything was proceeding normally when suddenly the young mother fell ill. Her father-in-law treated her for a day or two, being himself a village doctor. The case, however, became serious, and her husband came from the school; but before the patient could be removed to Lucknow for treatment in the Medical College Hospital, she died. This was on the 11th day of the child-birth. Her death was duly recorded in the Official Death Registers at Ganj. The grief-stricken family then returned to Barauli with the new-born baby.

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It was, however, admitted that the girl's mother (maternal grandmother of the infant) had not paid any visit after hearing the sad news of her daughter's death, nor had she sent for the baby, nor any customary presents for him. I have already mentioned that in fact in the Revenue Registration proceedings an application had been made on her behalf denying the genuineness of the child altogether. To that the reply was that this application had never been signed by her, there was nothing to show that it had been made with her knowledge or authority.

The counter-evidence led on the part of the uncle to disprove the child-birth need not detain us long. There were ten seemingly most respectable witnesses, men and women, many of them family relatives, who definitely swore that during several months preceding the alleged delivery they had repeatedly seen the girl and she definitely was not in the family way, and really there had never been any child-birth at all. The whole story was a fabrication. Had this evidence stood by itself it might have gone a long way; it was so apparently water-tight and on the face of it unexceptionable, of people who were in a position to know. But unfortunately for the truthful witnesses, the very last individual—a woman servant—in cross-examination, gave the whole show away by saying that when the girl had come to visit her mother during the rains, she did not participate in the festive Merry-Go-Round and the swings because she complained of nausea and was carrying. That knocked the bottom out of the story told by the previous ten witnesses. Although some effort was made to suggest that the maid-servant might have been got at by the other side, nobody thereafter paid any serious attention to all those witnesses. The maid-servant had simply blown them away.

The action was, like all civil suits in India, tried by a Judge sitting without a jury. He decided against the

infant and dismissed the action. The trial Judge disbelieved the story of the child-birth, but he did so in an extremely weak and unconvincing judgment. This Judge was not famous for maturity of judgment or much ability or experience, and no one during the hearing of the appeal in the High Court showed any deference or attached the least weight to his opinion.

On appeal to the High Court at Allahabad, I was engaged by the uncle-respondent in the appeal to support the decree of the lower court. I read the papers and at once came to the conclusion that it would be utterly futile to adopt the line of reasoning which had appealed to the trial Judge and that I should have to throw the judgment overboard completely and must chalk out a line of my own if I wanted to succeed.

The entire evidence was well-marshalled and well-documented, and on the face of it there was nothing improbable to discredit it. But somehow its very completeness aroused my suspicion. Such symmetry is not in nature. And then the advertisement in the newspaper mystified me completely. It was so unnatural, so opposed to all Indian experience, and so significant. It struck me as the product of some scheming brain, anxious to bring into existence a bit of evidence whose genuineness and in particular whose date would be wholly beyond question. I said it was unnatural, because in India no one ever think of advertising for a wet nurse. When any such emergency arises in any family, you try to feed the baby on the bottle, or seek the assistance of some female relation in the family, an aunt or a cousin or a sister-in-law who is herself suckling a new-born baby, and at the outside you search for a nurse in your neighbourhood, in your village, or in your street. But advertising is never thought of. It would serve no purpose. Prospective wet nurses do not read newspapers.

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The more I thought about the case, it seemed to me that this advertisement held the clue to the mystery. And then there was the other important feature, namely, that the grandmother had done nothing to celebrate the birth of her daughter's child. This also struck me as exceedingly significant. Here was an only daughter, now dead, who leaves a son as her only memorial, and here is the grandmother doing absolutely nothing about it. Common experience of Indian families is that the grandmother would have rushed and attempted to bring back the child to her own home so that she might bring it up herself. But this grandmother was evidently a wholly unnatural person.

Having regard to the evidence, I thought that quite possibly most of it relating directly to the birth of the child might well be true and yet the child might have pre-deceased the mother, thus bringing about from the point of view of the husband and his family the same calamitous results with reference to the property as if he had never been born, and I thought that the advertisement was intended to be proof positive that the child had survived the mother. But this was a most dangerous line to adopt in argument. The case had been fought on the direct issue, birth or no birth. My client had even denied a conception: and for me now to suggest at the fag-end of the case in appeal that a child had been born but had pre-deceased his mother might amount to giving away the whole case. There was not a shred of positive evidence to suggest that the child had died at all or that he had died before his mother. No such case had been fore-shadowed in examination or cross-examination of witnesses and the Judges might well, while taking advantage of my admission about the birth of a child, refuse to let me contend that he was dead. Not only was there no evidence to support such a contention but in point of law

there is always a presumption in favour of continuity of life. I could not therefore formally abandon my client's case as he had put it in his evidence, but it was open to me as an Advocate, while insisting that it had not been proved by reliable evidence that there had been any child-birth at all, to go on to insinuate that the real issue which the learned Judges had to try was not the mere fact of a child-birth but also of the survival of the child on the death of his mother, and that was the line I decided to adopt.

The appeal came on for hearing before Justices Lal Gopal Mukerji and Douglas Young. Justice Mukerji was an ideal Judge in many ways, but with all his politeness he was rather obstinate and self-willed. His brother Judge, Justice Young, who had recently come out to India from England, naturally deferred to him on estimates of evidence bearing on Indian family customs and usages. As soon as the hearing began and Iqbal Ahmad (who subsequently became the Chief Justice of the Allahabad High Court and was Knighted) opened the case for the appellant and stated in outline the evidence in support, both the Judges were extremely impressed, particularly because on my side there was a complete denial even of the conception. When the Birth Register was put before the Judges, Justice Young looked enquiringly at me (he held me in some esteem) as if asking what I had to say about the entry in the Birth Register which really finished my case. I merely observed, "It is really too good to be true, My Lord" and kept quiet. Justice Young was rather struck by my cryptic sentence. Having known that I did not usually indulge in heroics, I think he kept his mind open right up to the end. But its subtle significance was wholly lost on Justice Mukerji, who soon made up his mind and the position quickly became seemingly quite hopeless. Iqbal Ahmad went on for three days and whatever he said the

learned Judges swallowed like a glass of champagne or of soothing syrup. They were with him completely; 16 annas in the rupee. When he found the Court entirely in his favour, to clinch the matter finally, he said, "My Lord, the similarity between the child and the father is, I understand, so striking, that Your Lordships would at once, by merely looking at them, come to the conclusion about the perfect truth of my case. If Your Lordships so desire, we can produce the child here in Court. He can come to-morrow or the day after."

This was, of course, perfectly irregular and a very insinuating method of introducing new evidence into the case. But the Judges readily agreed. Justice Mukerji said, "Certainly, it would be very helpful; do let us have the child here in Court," and counsel undertook to produce him in two days. In the evening my client came to me and enquired if I would mind if he went home. I had found this individual extremely dull and slow-witted (probably an addict to drugs), not much of a help in the preparation of the case, and so I said "Yes, you may go if you like, but what for?" And the reply was: "Oh, Sir, I would just go and try and beg Sardar Singh not to lend his boy for exhibition in Court because I know that he is the individual who would come to the assistance of my opponent in this way." It would seem that my client was utterly unsuccessful because two days later a child, whether Sardar Singh's or a genuine proposition was presented in Court, but at least I could not see much of a resemblance between the father and the son, nor evidently the Judges either. I am afraid Iqbal Ahmad was rather taken in by his over-zealous clients, but Justice Mukerji merely observed "Oh, sometimes it takes a baby years to acquire settled features. You require the child to grow up before you can determine whether he resembles anybody." I kept quiet.

As soon as Iqbal Ahmad sat down, I rose but I found, the wind blowing so strongly against me that I thought it prudent for once in my life to begin saying in a very apologetic way, "My Lords, I have been listening to the very strong observations which have fallen from the Bench during the last three days, and I would really not have taken up Your Lordships' time by any argument of mine, but I do think that there are some aspects of the case which require Your Lordships' consideration." This calmed down the Judges a bit as it was intended to, and Justice Mukerji readily said, "No, no, we have not made up our mind, Dr. Katju; you take your own line and take your time." So I began, step by step, but it seemed really there was nothing doing.

I argued the case at great length for two full days, went into the entire evidence in detail, and commented upon it, but the burden of the song throughout was the fraudulent advertisement and to a lesser extent the conduct of the grandmother. I came back over and over again in a variety of ways to the central point that the advertisement was the pivot of the whole case and that it was a decisive factor. I appealed to the experience of Indian families. I said that I had had children of my own and my wife and I had felt similar difficulties, but we never thought of advertising. I appealed directly to Justice Mukerji's experience in regard to this matter, and finding the Judges not sufficiently responsive to my passionate arguments, I made a challenging offer. The newspaper offices were about a mile from the High Court. I said, "My Lords, if you find a single advertisement inserted in this newspaper asking for a wet nurse during the last ten years, you decide the case against me forthwith. I am prepared to abide by such an undertaking. Appoint a Commissioner. Let him go and search the old newspaper files and report to

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you at once about the matter." I went on with increasing vehemence and I persisted till the Court rose for the day over the week end. My persistence had its reward, because when the argument was resumed on the following Monday I found to my utter surprise a complete change in the judicial skies. They had ceased to be gloomy and threatening. It was all bright sunshine and rosy, fleecy clouds. I have never seen such a change of front in Justice Mukerji in my life. Every observation which fell from the Bench was strongly in my favour. I could not really believe what had happened, but soon concluded the argument. My learned friend Iqbal Ahmad was very much taken aback by this new development (he was under the impression that the battle was won and was elsewhere and was sent for by an S O S by his juniors) and he thought the most attractive way of putting his reply would be to fortify his submissions by recalling to the Judges the adverse remarks which they had made to me from time to time in the course of my arguments. When he had done so three or four times, Justice Mukerji could not restrain himself any longer and he burst forth: "Let me tell you quite frankly, Mr. Iqbal Ahmad," he said, "how the matter stands with me. This is one of the most perplexing cases that I have tried. It has ruined the week-end for me. I spent five hours reading over the papers on Saturday last, and four hours on Sunday, and now I think I see the light. I am convinced that your case is false. I think that either there was no child at all, or the child did not survive the mother. I quite agree that Dr. Katju has not been able to meet most of your evidence, but your advertisement completely knocks you out." There was an end of the case.

Months later a friend who lived in that neighbourhood came and we talked about the case. I asked him if he



knew what the truth was and what had actually happened. " Oh," he said, " everybody knows it; the case was a false one." I said, " How?" and he answered, " There was a child but the child died two days before his mother." So that was that. May the immortal Sherlock Holmes guide us all in the search for the truth !

11

SHERLOCK HOLMES IN INDIA

II. *The Story of Handcart Wheels**

I PAID MY HOMAGE the other day to the genius of Sherlock Holmes but I have often wondered how would he, had he been an Advocate at the Bar, have utilised his great powers of observation, analysis and inference. He functioned as a supreme detective of modern times in the English-speaking world. He had a clean slate to write upon in that he was called upon to investigate and see things for himself *in situ*. He went, he saw and he solved. He observed marks and signs which others had failed to observe. He requisitioned to his aid his immense scientific knowledge and experience of human nature to reconstruct a crime. His powers of analysis enabled him to follow clues which others had completely ignored. But over and above all, Sherlock Holmes and all his tribe exist to assist forces of law and order in bringing offenders to book. An advocate, on the other hand, while he undoubtedly assists the administration of justice, does so in a negative way. His main business is, by honourable and clean methods of advocacy, to get his client out of the dock and win his case. If the client has been the victim of a conspiracy, whether of circumstances or of happenings, his advocate is there to expose that conspiracy and extricate him out of its meshes. In India, unfortunately, such conspiracies are not unknown and the actors therein are often police officers and others of

* Gifted to and published by the S. K. Ray Tuberculosis Hospital, Jadavpur, Calcutta, in 1948.

high intelligence, who definitely want to weave a web round their victim. It may be that these investigating officers, becoming convinced of the guilt of the accused, act on the principle that the end justifies the means, and do not hesitate to make good all the gaps and deficiencies in the evidence by false witnesses or fabricated documents. Sometimes it is much worse and the prosecution makes definitely a wicked attempt to implicate a person known to be utterly innocent of the crime charged against him. In such cases Sherlock Holmes as an Advocate would have been superb. He would have by his keen insight done wonders for his client. But very often it is difficult to say where the truth lies, and the task of the advocate becomes difficult indeed, and that difficulty is much enhanced if he handles the case in appeal on a dead record of statements of witnesses whom he has neither seen nor heard. Sherlock Holmes was always able to go to the spot and examine for himself everybody and everything as he pleased, but an advocate on appeal has not that advantage, and a local inspection as it is said after months may be utterly profitless. In these circumstances as a devout pupil of Sherlock Holmes I always imagined that my master would have endeavoured to spot out the weakest link in the chain of evidence and then proceed to reconstruct the whole scene—with his client either not in it at all or playing an altogether innocent part in the drama—and then put it before the Judge as a probable story of what had actually happened. This might be a *tour de force* of ingenuity, an imaginary account, as plausible as truth itself, of the actual incident, quite consistent with all the admitted and established facts of the case, but just with the accused out of it as an offending party, or it may be, by sheer force of intellect and intuition, a discovery of the real truth from masses of falsehood. In either case I always thought that Sherlock Holmes would never have rested content with



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a mere naked and barren defence that no burden lay on the accused, and it was not for him to say what had happened. On the contrary he would always have suggested or insinuated a rival theory of his own about the occurrence—a theory either true or, if not true, at any rate as good and credible as the story for the prosecution. Be it always remembered that an advocate, in the criminal courts in India, seldom gets any real assistance from his client, the accused in the dock. The prisoner at the bar very often pleads an *alibi* which is either plainly false and absurd, or is bolstered up by evidence which is easily proved to be false. The first impulse of an accused person in India is to remove himself as many miles as he conceivably can from the scene of the crime and to say that he was not there at all. The result is that the stock of *alibis* in India has almost touched zero. A man, however, who says that, when he is alleged to have murdered the deceased in Calcutta he was in point of fact at that very time at Lahore, definitely proves an encumbrance to his counsel and the latter can only rely upon his ingenuity and experience in building up an alternative case on the merits which would absolve his client from guilt. I make all these preliminary observations because in my devotion to my master I always pictured to myself how he would have, with his infinite capacity for taking pains over details, endeavoured to find a clue to the case had he been briefed on appeal for the accused. I felt sure in my mind that he would never have asked the convicted prisoner about the so-called truth of the case. To put this question to a person condemned to death is not only cruel but silly. It is to invite a falsehood. I therefore seldom talked with the accused. I just read the papers, and discussed the case with my colleagues. The argument really became an intellectual exercise and in this enterprise all the rules Sherlock Holmes used to expound

to his dear Watson from time to time sometimes proved sure guides. As Sherlock Holmes used to say, "These were really elementary but nevertheless they went to the root of the matter."

Take, for example, that wonderful rule that if you are out in pursuit of a man or any other moving object and find it physically impossible that the man or object concerned could have, in the circumstances, gone or moved north, south and east, then it must have gone in the western direction—no matter how improbable that might appear, and you must follow and search for him there. How simple is the rule, but how often it is overlooked. Readers would remember the wonderful results Sherlock Holmes achieved by acting upon it in the famous case of "The Priory School." He followed the tracks of a bicycle and solved the mystery of the disappearance of the young son of the pompous Duke of Holderness. To that elementary rule of Sherlock Holmes Shiva Mangal Singh owed his life. His was, in my view, the most remarkable case of my professional career. Never in my long experience has one single circumstance led to the acquittal of a man condemned to death with such startling quickness. I do not know what the truth was nor have I seen Shiva Mangal Singh ever afterwards since the day now many years ago, when I saw him in heavy fetters in the corridor of the Allahabad High Court, but the story, as it was narrated in the evidence and was accepted by the Trial Judge at the sessions, was remarkable and it is worth recounting.

One afternoon, a cultivator noticed fairly extensive blood marks in his field. This field was far away from his village habitation and was situated close to a canal bank. The canal bank road was connected at some distance with a wide unmetalled country road which ran from north to south. The man was disturbed greatly by what he saw.

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He came to the village and reported the matter to the village watchman. The latter at once accompanied the cultivator back to the field and verified the story. He then proceeded to the Police-Station, where he lodged a report of what he had seen. Thereupon the Station Officer, accompanied by a constable, went to the spot. This was nearabout sunset time. The Station Officer looked into the field closely, noticed a quantity of blood lying about and an old pair of Indian slippers, and he further observed marks of somebody or object having been dragged across the field. These marks led him to the path by the canal bank where he marked two wheel tracks. These tracks he pursued and ultimately he came to the big wide unmetalled road mentioned above. Stopping there he found the cart-wheel tracks going both to the north and to the south. First he turned, according to his evidence, towards the north and he found the tracks going forward for about 100 yards up to a fairly wide patch of rather firm ground and there the track ended. He thought he had come to a blind alley and had better go back, retrace his steps and go southward for better luck. This he did and proved more successful because the tracks were quite clear and distinct for about two furlongs when they ended in a big grove of trees. Here, however, had been enacted some gruesome tragedy because there were patches of dried-up blood pools. The wheel marks went no further. It was all an absolutely dead end. Obviously some one had been murderously assaulted there. Round about were cultivated fields, and the Police party went searching about for further clues. At one place in a field the earth appeared to be rather loosely filled in, and on digging was found a big bundle containing large quantity of cloth with an account book in it. After a little trouble people identified the bundle as belonging to a hawker, Ram Narain by name, who used to go about with a handcart

holding his booth in the weekly village markets and the account book recorded his transactions with his customers. The field was the field of Shiva Mangal Singh. It had become quite dark by this time, and this southern end of the road having been completely exhausted, the Station Officer with his constable came to the village and spent the night in the zamindar's house (*chaoni*). What he did the next day was the crux of the matter. According to his evidence which the Trial Judge accepted he was rather leisurely in his movements and did not display any particular keenness about his investigation. He sent for Shiva Mangal Singh, but Shiva Mangal was not to be found in the village. The Police Officer discussed the case in a desultory fashion with the villagers, but when he was about to proceed to the scene of occurrence some village people asked him to tarry a little. Shiva Mangal Singh, they said, had just arrived and might they thought, be made to talk. A little later, these villagers produced Shiva Mangal before the Police Officer and Shiva Mangal made a clean breast of it. He had, he confessed, murdered Ram Narain, buried the bundle of cloth in his field and thrown Ram Narain's dead body in a rather out-of-the-way well in the jungle, $2\frac{1}{2}$ miles away. He indicated the well precisely, and the Police Officer with a party of villagers forthwith went to that well, but Shiva Mangal was not in this party. He was left behind. The Police Officer said he had only one constable with him and he thought it would be risky to take Shiva Mangal along with him to the well. He might run away. So the Police Inspector thought it prudent to leave Shiva Mangal behind in the village safely locked up in the zamindar's house with the constable to mount guard over him. The well was dragged, and poor Ram Narain's body came out of it. The Police Officer and party returned to the village, Shiva Mangal Singh was further questioned and

pointed out the chassis of the cart and its wheels hidden separately—the cart close to his house and the wheels at a distance in a field—under hay stacks and standing *arhar* crops. This story of the Police Inspector was fully corroborated by several villagers who seemingly bore no personal malice or ill will against Shiva Mangal. These villagers also deposed to the confession which Shiva Mangal had made to them before they took him to the Inspector. There was, however, no eye-witness of the crime. The case rested entirely upon the confession of Shiva Mangal and the discovery of the corpse and the cart made on his information. If this evidence was reliable—and the Trial Judge had accepted it *in toto*—there was an end of the case, and Shiva Mangal must hang. He was ordered to be hanged and he appealed to the High Court.

When I read the depositions, they seemed watertight. The witnesses appeared to be decent individuals with apparently no motive to put a noose round the neck of Shiva Mangal Singh. But this in India is not a decisive factor in considering and weighing oral testimony. It is sometimes difficult to fathom the reasons or the motives which lead a man to give false evidence in a law court in India. Often it is only a desire to keep on the safe side of the Police-Station or to curry favour with the Station Officer. Not seldom have I, when pushed into a corner by a Judge, said that I refused to answer the question as to why a particular witness was telling lies. That was a burden, I used to say, impossible for me to discharge. As was judicially observed 400 years ago, Devil himself is not able to read the thought of man. In this particular case nothing could be said against the witnesses, but I was nevertheless much struck by a rather extraordinary feature : the Inspector had not taken Shiva Mangal Singh with him when he had gone to discover the corpse in the well. Whenever any



incriminating discovery is alleged to be made by the police on information given by the accused, almost invariably the accused is or is made to be present at the time of the discovery itself. In fact it is he who suggests on the spot how the discovery should be effected. The story that Shiva Mangal Singh was left behind because of the danger of his escaping from police custody seemed to me incredible as well as highly suggestive. Could it not be that the discovery of the dead body in the well was due to something else? But if Shiva Mangal Singh had not informed the police, then how did the police come to know of it? That was the question because undoubtedly the well was very much out-of-the-way and at a great distance in a jungle, and no investigating officer could possibly think of making a search in it without some definite information or other adequate reason. Here one particular document to which no one in the Trial Court had paid the slightest attention appeared to me to be of crucial importance and indeed solvent of the whole mystery. This was a site plan made by the Police Inspector in the course of and as a part of his investigation. This site plan indicated clearly all the points to which I have already referred, but towards the north the map told a revealing story. Wheel marks were shown clearly towards the north for a little distance and then came the big 50-75 yards long patch of dry, hard ground with no marks thereon, and then came softer ground and the tracks began again, went a long distance and then suddenly turned towards the right and led straight to the well. I thought the plan to be extremely significant and it at once struck me that it was not Shiva Mangal Singh which had led the Police Inspector to the well; the wheel tracks had done the trick, the marks were the real informers and the pointers. The discovery had merely been fathered upon poor Shiva Mangal Singh by police ingenuity.

I pictured to myself what Sherlock Holmes would have done had he been in charge of the investigation. He would definitely, while the scent was strong, have pursued it like a hound. He would not have dawdled away the whole morning in the village, as the Police Inspector said he had done, but would have risen early and gone straight to the spot again. If necessary, he would have again exhausted the southern end and if he found that it was clearly a dead end, then he would have said to himself "Carts do not evaporate into thin air" and "if this cart has not gone south and as east and west were wholly out of the question, it must have gone north, so let me go north again." He would have therefore taken himself to the northern direction again and striking the patch of hard ground, he would have continued onwards and then found to his great joy the tracks again leading him straight to the well. And I said to myself that I had no business to suppose that this Police Inspector had not been as clever and as diligent as Sherlock Holmes. Very likely he had done exactly what Sherlock Holmes would have done, and his present evidence was a mere concoction to implicate Shiva Mangal Singh. He had discovered the corpse and then he thought to himself that as the bundle of cloth was found buried in a field belonging to Shiva Mangal Singh, he must be the real culprit, at any rate, the individual on whom the guilt could be fastened. The subsequent alleged discovery of the chassis of the cart and its wheels separately on the pointing out of Shiva Mangal Singh was really not a very crucial circumstance. If the Police Inspector was capable of planting the discovery of the corpse on to Shiva Mangal Singh, he could easily concoct a similar tale about the discovery of the cart and the wheels. The dead body, thus, became a very living factor so far as Shiva Mangal's life was concerned. Whether he was to follow it himself prematurely to the cremation ground



depended entirely upon how and at whose instance it had been discovered. The case considered from this point of view became absurdly simple indeed, and I made up my mind to put it that way in Court. There was really no other way at all because as I have said, the evidence was, on the face of it, very full and coherent and completely above suspicion.

The hearing will ever remain memorable to me. In the Allahabad High Court a condemned prisoner, if he so wishes and applies in time, has a right to be present at the hearing of his appeal. The poor fellow very rarely takes any intelligent part in it. These prisoners often come because they get an opportunity of breathing fresh air out of their condemned cells, and of meeting their relations in Court. They are brought in bars and fetters, heavily guarded and are generally made to sit in the Court corridor. The case was listed for hearing before two senior learned Judges of great experience in criminal law—one a member of the Indian Civil Service, Sir James Allsop, and the other a member of the Provincial Civil Service, Mr. Ganga Nath.

As I entered the Court room, I noticed Shiva Mangal Singh crouching outside the door in the corridor. It was a pinched, drawn, haggard face; he bowed when he saw me and I nodded, but we did not converse. It was no use, I had nothing to ask. The case was first on the list and the hearing began at 10-30 a.m. and never in the whole of my forty years' professional experience has there been such a startling, indeed sensational, end to any case. I stated the facts of the case in brief outline, put my point before the Court and to make my argument a little more impressive, I asked permission to go up to the dais to lay the site plan before the learned Judges in its proper perspective. The result was astonishing. I do not think I took more than 40 minutes, probably less, but the shot went home. The

case had taken eight days in the lower court to try. The evidence was lengthy and even the printed record was a bulky one, and the judgment was long and elaborate. But, believe it or not, not a word of the evidence was read, nor of the judgment. I think one learned Judge knew nothing of the case before he heard it in Court, the other learned Judge may possibly have read the judgment beforehand. But within forty-five minutes there was practically an end of the case. Mr. Mohmed Ismail* was the Government Advocate. Sir James Allsop soon turned to him, "Well, what do you say to all this, Mr. Government Advocate? I suppose the facts are as stated by Dr. Katju." Mr. Ismail, himself a very experienced Advocate at the criminal bar, had really not much to say. He mentioned the oral evidence about Shiva Mangal Singh's confessing to his co-villagers, but Sir James Allsop would have none of it. He said it would be much too risky to uphold the conviction on the basis of an alleged oral confession. The cart tracks were really decisive of the case. Within an hour Sir James Allsop began dictating his judgment to the judgment-writer. I was then called away to another Court, and as I was coming out of the Court room, Shiva Mangal Singh saw me, and as I thought he suspected that I was going away in the midst of the case leaving him in the lurch, I just said to him "*Tum chhoot geya*" (You are acquitted). But he would not believe his ears, and with staring eyes began shouting "*Ham chhoot geya,*" "*Ham chhoot geya,*" in wholly incredulous tones. It was a pitiful sight but I could not stay. So I said once again "*Tumara apil manzur hua; tum chhoot geya*" (Your appeal has been allowed, you have been acquitted), and then hurried away to argue

* He subsequently was for many years a much respected Judge of the Allahabad High Court and is now the High Commissioner for Pakistan at New Delhi.

another case elsewhere. I have not seen Shiva Mangal Singh since that day. I do not know whether he is dead or alive, but to my dying day I shall not forget that face with the frightened look and the bulging eyes shouting "*Ham chhoot geya*," "*Ham chhoot geya*" in incredulous tones. Goodness knows whether the man was guilty or not. I do not. It is Sherlock Holmes that saved him.

SHERLOCK HOLMES IN INDIA

III. The Story of the Trunk in a First Class Compartment

IN THESE RANDOM recollections while revering the memory of Sherlock Holmes and acknowledging the irredeemable debt that I owe to him, I have stressed over and over again that in the vast majority of cases in the law courts though the evidence, oral and documentary, may be voluminous, very often in the final analysis it becomes apparent that the case turns entirely upon a single circumstance. There may be one particular feature completely decisive of the case, or there may be a lacuna in evidence which, in a criminal matter, comes to the rescue of the accused and saves him from the gallows. It is not the function of an Advocate to sit in judgment upon the merits or demerits of his client's case, and not rarely truth is so smothered under falsehoods of all kinds that it may be difficult even for an Advocate, if he were so minded, to discover where the truth lies. When parties finally make up their mind to have recourse to law courts, they seldom take their Advocates into confidence, and it may sound a little strange, but nevertheless it is a fact, that the higher the character and reputation of an Advocate for probity and straight dealing the lesser the inclination of his clients to disclose to him the real facts of the case. They seek to take advantage of his forensic skill as an Advocate, and real advocacy involves many things. Consciously or unconsciously advocacy is linked closely with the personality of an Advocate. The higher his repute as a man of honour, the greater is the persuasiveness of his advocacy. An Advocate for the time being envelops his

client, whoever he may be, with the halo of his own personality. Therefore all clever litigants scrupulously avoid taking such Advocates into their confidence. They really fear that by doing so, they might be deprived of his advocacy altogether. He might refuse their brief or even if he were to accept it, he might not be able to put his heart into their case. Therefore the lesser said the better. The result is that an Advocate may have his own suspicion about the correctness of his client's version. It is after all mere suspicion and nothing else. Therefore you have a spectacle which sometimes makes laymen so angry. Skilful Advocates succeed in getting off their clients, who were very probably really guilty, by sheer ingenuity in emphasising one particular aspect or making the most of one vital missing link in the chain of evidence. In such cases the Advocate is blameless, the fault, if any, lies elsewhere.

Young friends often ask me the secret of successful advocacy. I have always found it difficult to answer that question. There is no one recipe. You read biographies of distinguished Advocates of past centuries and you will find how many-sided this mystery is, and it all depends ultimately upon one's own temperament and habit of mind. Every Advocate can only answer the question on the basis of his own experience, and my experience has been that while one should read his brief from cover to cover, the great merit lies not in mastering all the details of the case, but by trying, as Sherlock Holmes used to advise, to forget nine-tenths of what you had read in the brief because it was utterly useless and of no consequence whatsoever in the final decision of the case. Think over as closely as you can on the remaining one-tenth, and reconstruct the picture in such a way that your client may get out of the coils spread round him.

Some time ago I narrated a case which I called "The Story of the Handcart Wheels" and stated therein how a

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small point arising out of a sketch plan had worked miracles and had got off a man under a sentence of death within 40 minutes. I had a similar experience later in the year 1944 in the Patna High Court. Appearance in a different court often raises difficult questions as to the least line of resistance, if I may put it this way, to follow in the course of argument. Advocates practising in one High Court become accustomed to their Judges, and as an argument in the High Court proceeds always in a very friendly atmosphere, the Judge and the Advocate knowing each other very well indeed, and knowing how the mind of a particular Judge works the Advocate can trim his sails accordingly. But when one goes to a different High Court, one feels as if he were in a foreign land amidst strangers. Want of knowledge of a Judge's mental approach to a case and, may I add, his idiosyncrasies, sometimes makes the task of an Advocate very difficult and his argument even unimpressive. The Judges may out of politeness say nothing, but it becomes obvious that the Advocate is not making his way as he should. However, whatever may be said about different methods of argument and mode of presentation of one's case, I have invariably found that brevity and concentration upon the one point which arises in the case appeals everywhere and strikes the responsive chord in the mind of every Judge, whoever and wherever he may be. I personally always proceed on the assumption that every honest Judge wants to get rid of the case before him as quickly as he can, and he feels a deep sense of gratitude (he may not avow it openly) to every Advocate who assists him in achieving that desirable result. Anyway that was my experience, I imagine, to the surprise of many people present in court in the case which I had gone to argue at Patna. The case was a difficult one. The Sessions Judge had, in convicting the accused, wound up a most elaborate



judgment by saying that looked at from every aspect he "had not the slightest doubt in any corner of his mind that the accused was guilty of murder" and had sentenced him to death. The circumstances were unusual and the case was a strange example of the working of the human mind. Let me set out the story in the way in which the curtain rose on this exceedingly human drama.

Patna and Gaya are the two important cities in the State of Bihar. They are 53 miles distant from each other and there is a frequent train service running between the two cities. These were war time days, and a few miles out of Gaya there was a military encampment where some British regiments were stationed.

One morning some soldiers having some official business at Gaya boarded the branch line train for Gaya, and having soon finished their business there, they started on their return journey, I think, by the same train on its way back to Patna. When the soldiers entered their first class compartment they found a trunk in it. They naturally thought that it belonged to some passenger who would be their fellow-traveller. The train, however, started and nobody came in. Thereupon they shut the door, still being under the impression that very likely the owner was travelling in some other compartment with some friend of his. The trunk rather stood in the way and one of the soldiers tried to move it aside. When he had done so, he found a blood mark on one of his fingers. Thinking that this might be due to his scratching the finger against the trunk, he washed it, but lo and behold, to his utter surprise he found it intact with no sign of any injury or scratch upon it. He mentioned this to his comrades, and then they all moved the trunk a bit further and lifted it a little when to their horror they found blood marks on the floor. The train soon arrived at the first station where they had to alight,



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but on their mentioning this matter to the Station Master, he insisted that they must remain in the compartment and go on to the next station, where railway police would be available to look into this evidently serious matter. So they went on and on arrival at the next station the police came in. The trunk was taken out. It was opened and wrapped in gunnies was found the dead body of a young lad between 16 and 17 years old. No one, of course, then knew who he was. I think the trunk was taken on to Patna, where a photograph was taken and after a postmortem examination the body was cremated. A few days later in a rather dramatic manner the identity of the murdered boy was established. There were naturally extensive police investigations, and ultimately the accused, a Brahmin priest of Gaya, was prosecuted for murder of the boy. The story put forward by the prosecution was indeed a remarkable one.

These priests of Gaya, called Gayawals, as everybody knows, are a very ancient community in Gaya, who have been for centuries past looking after the pilgrims to Gaya, well-known for its sanctity throughout India. The accused, it was stated, possessed with his brothers an ancestral house, where he lived with his wife. He did not, however, find the atmosphere very congenial, and he spoke to a distant relative that he should like to shift elsewhere. This man, advanced in age, had a house divided into two compartments. One was lying vacant and he let it out to the accused on rent. The two compartments were interconnected. With the old man lived his wife and the murdered boy, a relative of his wife, whom he had in a way adopted.

The wife of the accused was about 25 years of age and was fond of music. She had a harmonium and often she sang and played upon it to please herself. This young

lad visited the couple frequently, and the husband thought that sometimes his wife spoke to him in a rather affectionate way which he did not like, and he thought also that the boy spoke to the lady in a rather free and easy style which he did not like either. So, he complained to the old man and told him that the boy was not welcome and must not come to his house, and he had the intervening door closed.

This, however, according to the police case did not close the chapter. The boy persisted in his attentions and took every opportunity to hang upon the musical voice of the lady of his fancy. The husband, it was said, once actually discovered a scene very much in the style of Romeo and Juliet. He found his wife playing on the harmonium in the room, and he noticed the boy standing in the street just below with his feet beating and keeping time with the music. This infuriated the husband, and it was suggested that he made up his mind to get rid of the boy altogether. From this stage the prosecution story ran into great detail. It was stated that the accused pretended to adopt a friendly attitude towards the boy, and then one day by some subterfuge induced him to go to his own ancestral home, which was situated in a narrow lane. There he had made all arrangements: a trunk and gunny wrappings had been procured and so had been a rickshaw. Having got the boy inside, the accused was alleged to have murdered him and then wrapping the body up he locked it in the trunk. He then mounted the rickshaw with the trunk and went to the Gaya Railway Station. There seeing a fare alight from the rickshaw a porter ran for the custom. As soon as he lifted the trunk he found it to be extraordinarily heavy and he put it down on the ground, and then began haggling over the hire. The porter said that inasmuch as the load was very heavy, he would not take the usual hire, but a larger amount. He named 8 annas instead of 4 annas. The

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accused was not agreeable, and while this haggling was going on, another porter was said to have intervened in a friendly manner and said to his brother porter "Don't be a fool, carry the load. The accused is a generous man and will no doubt give you a proper hire." And thereupon the first porter became reasonable and carried the trunk to the Gâya-Patna Passenger, where he put the trunk, under the direction of the accused, in a third class compartment.

The prosecution adduced oral evidence to prove every link of this story. Witnesses came forward, who had seen the accused going with the boy towards the ancestral house. I think one of the witnesses overheard some talk, and then others saw him getting on to a rickshaw with a trunk; and the porters identified the accused at a formal identification parade. The old man, who had in a way adopted the boy, testified about the anger of the accused at the boy's behaviour, and deposed that the accused had bitterly complained about it. Thus, while there was no eye witness to the murder, the circumstantial evidence was supposed to be very complete. The boy had been seen for the very last time with the accused, and thereafter had completely disappeared till his dead body was discovered in the trunk.

The trunk itself was, however, of a very common variety, and the porters were unable to single it out as the one which they had seen or carried, nor was there any other evidence connecting it with the accused.

The Sessions Judge had discussed the evidence at great length. He had seen and observed the witnesses in the witness box, and he said that he was satisfied that they were telling the truth, and he felt no doubt whatsoever as to the guilt of the accused.

I do not know why I was approached in this case at Allahabad, but one day a woman in deep distress, accompanied by a junior Advocate, came and offered me the brief. She

said that she was the sister of the accused. She was obviously care-worn, and the crisis facing her brother had evidently had great effect upon her in every way. In the circumstances in view of the woman's pitiful appeal it was quite out of the question for me to refuse the brief. It would have been cruel to do so.

On reading through the brief I found it to be an extremely difficult case. Of course, it was possible to make all sorts of points on the depositions of witnesses and to argue upon the flimsiness of the motive for this dreadful murder, but all said and done the witnesses were all independent and had no motive whatever for implicating the accused on a false charge of murder, and the circumstantial evidence appeared to be water-tight and overwhelming. There was, however, just one gap in the evidence which, I thought, might prove a decisive factor in the case and that was the complete absence of any explanation as to how the trunk which had been placed in a third class compartment, had found its way into a first class one, where it had been subsequently found by the British soldiers. I thought to myself that if this man was to be saved, he could only be saved on account of that missing link and by nothing else.

The hearing was like the hearing in the case of Shiva Mangal Singh, which has been described by me in the narrative called "The Story of the Handcart Wheel." The brief was a bulky one, and the Registrar of the court had assigned at least full four days for the hearing of the appeal. It began in a crowded court room before two very learned and experienced Judges. By this time I had, so far as I could, perfected my own technique of reading as little as I could from the printed brief and making the case a human story by oral narrative. So, I began in a conversational style as a story-teller, and noticed that the Judges were interested. Nobody read the paper book. Indeed,

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nothing was read so far as I remember. I told the tale from the beginning to the end stating what was the kind of evidence which had been adduced, mentioning broadly my objections and comments upon it and then finally clinching the case and practically resting the whole of it on that crucial point as to how did the trunk come into the first class compartment. No one had identified the trunk, and I contended that in the absence of that evidence conviction was an impossibility. When I concluded my story-telling the Judges expected that I would start in the normal manner of reading the evidence in detail, but I said—"My Lords, so far as I am concerned, the conclusion of the narrative is the end of the argument. I have nothing to add. I am entirely in Your Lordships' hands. What would you now like me to read?" The Judges were rather taken aback. The case had started very late in the day and the court adjourned, but before adjourning one of the learned Judges observed to the Government Advocate—"Mr. Government Advocate, you had better be prepared because you may be called upon to reply much sooner than you imagine." I suppose the learned Judges* had read the papers at home because next morning they just asked me to refer partially to the evidence of one witness, and immediately called upon the Government Advocate to reply. He said briefly what he could but not to much purpose because the Judges had evidently made up their mind. No reply was called for, and judgment was reserved. Everybody knew that the appeal was going to be allowed and I returned to Allahabad. A few days later came this sister, a completely changed woman—her cheeks glowing with colour and with health, and

* One of the learned Judges, who heard the case. Mr. Justice S. K. Das, did me the honour of administering the oath of office to me as Governor of Orissa on the 15th of August, 1947, and since then I have come to look upon him as a very esteemed friend.

her face wreathed in smiles. She brought the good news of her brother's acquittal, but that news did not interest me at all. I was rather struck by the transformation that had taken place in her by that event. She was a different woman altogether.

I never saw the accused. I was told by my daughter-in-law once that the sister had brought her brother to Allahabad to meet me, but I was not at home, and this lady had met my daughter-in-law and introduced her brother to the family also.

Years later on the 4th of December, 1950, I went to Gaya as a pilgrim, and when I entered the temple of Vishnupad at Gaya there was a gathering of Gayawals to welcome and greet me, and I naturally enquired about my client, the accused in the case, and I was told he was dead. He had died within three months of his acquittal.

As I have said very often, I never asked any clients of mine or those who instructed me about "the truth of the case." The superstitious may draw their own conclusions from the death which overtook the accused so swiftly after his acquittal. That is a matter of opinion. I know only this much that working of the human mind is inscrutable and often unpredictable.

JAWAHARLAL NEHRU AT THE BAR

PEOPLE OFTEN ASK me about my recollections of Pandit Jawaharlal's career as an Advocate in the Allahabad High Court. He was called to the Bar in England in 1912 and returned home and joined the Allahabad Bar the same year. His father, Pandit Motilal Nehru, was then one of the topmost leaders in the profession and his name was a household word in the United Provinces.

After practising six years in the Kanpur district courts I came over and joined the Allahabad High Court Bar myself in 1914. Jawaharlal was, as he has told us in his autobiography, attracted towards the Home Rule Movement inaugurated by Mrs. Annie Besant in 1916. He threw himself heart and soul into this movement after Mrs. Besant was released a few months after internment. This was in 1917. And then the Martial Law in the Punjab and its aftermath finally tore away Jawaharlal from the arena of the law courts. Readers will thus see that Jawaharlal's career at the Bar was only of a few years' duration. He and I then knew each other fairly well, but not intimately. We met in the High Court but social contacts were slender. Situated as I then was, I could not afford to develop them. It was only when Jawaharlal after 1919 came under Gandhiji's inspiration and threw himself heart and soul into the Congress movement that he began to mix with the masses, and my contacts with him also became warmer, not only with him but also with Pandit Motilal; otherwise he and I lived in two worlds far apart from each other.

People wonder whether Jawaharlal would have been as successful at the Bar as his father. That is a question

difficult to answer and one can only speculate upon it. The secret of success at the Bar really is a mystery for many centuries. People have tried to seek the key in the lives and careers of distinguished jurists and advocates, yet the riddle remains unsolved. Indeed it is always a question of personal equation, personal temperament and how one adjusts himself to his environments. Of course, there are basic requirements. A duffer and nincompoop and a shirker and one with no capacity for mastering the fundamental elements obviously cannot achieve success, but on the other hand, industry and legal scholarship are also always not passport to success. There is something undefinable about this matter. And then there may be some persons of such essential refinement that they cannot stand the rough and tumble and coarseness of the atmosphere of the law courts. If one were to be guided by Jawaharlal's life as it has developed through all these years one might be tempted to say that a soul so highly elevated and a personality of such delicate texture and so high-strung was indeed not suited for the drab and dismal and sickly surroundings of the law courts in India. I have somewhere likened a law court to an indoor ward in a hospital. In a hospital you see people suffering from physical ailments, whereas in a law court you come across people suffering from moral diseases and depravities. Neither place is cheerful or heartening and a covetable way of life. Of course, it cannot be gainsaid that if Jawaharlal had, in the case of his clients, given even one-tenth of the devotion, integrity, zeal and enthusiasm with which he had dedicated himself to the service of the nation, his success in the profession would have been assured. But here I am not thinking of mere success, but of climbing the heights.

The few years that Jawaharlal had been at the Bar formed also part of his growing political interests. It is

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not only that the law is a jealous mistress but the client is also a very shrewd judge, and it is only after some years of wooing that litigants begin to throng the chamber of a promising and rising junior. Jawaharlal of course began, as son of Pandit Motilal Nehru, with great advantages. He was socially well-known to Judges and must have at once come into professional as well as social contacts with leading families, landlords and industrialists in the United Provinces who supply the grist for the legal mills everywhere. I remember very well that over a year of his professional life he spent with strenuous exertions as a junior to Pandit Motilal Nehru in the famous Lakhna case, which formed at the time almost as much a topic of intense public excitement and curiosity as, years after, did the famous Bhowal Sannyasi case in Bengal. The great question of fact—there was the question of legal interpretation of a document also—in the Lakhna case was whether a young man who claimed himself to be son of a deceased zamindar was in truth his child lawfully-begotten or only a suppositious one put forward by him in his own lifetime for ulterior purposes. Like Watson I may tell the story of the Lakhna case at some other time. Proceedings lasted many many years and in the final stages I was myself associated as a junior with Pandit Motilal in it.

Jawaharlal had, I think, just started building up a promising practice of his own as a junior when the call of the country tore him away from the Allahabad High Court. In this brief practice of his I was but rarely associated with him but I remember two cases in which he and I came together and the story of both may be worth relating.

Pandit Motilal had started his professional career in the middle of eighteen eighties in Kanpur and people of Kanpur throughout his long life regarded him and loved him and revered him as one of their own. There had been many

friends of his youngest days and they were deeply attached to him. One of them was Babu Bansidhar, affectionately known throughout Kanpur as Bansi Babu. With the Nehru family in Allahabad and with Pandit Pirthi Nath, the beloved leader of the Kanpur district Bar, Bansi Babu was on terms of the closest intimacy. I think Bansi Babu must have fondled Jawaharlal when he was a baby and when I started my life in Kanpur in 1908 Bansi Babu, on coming to know that I was Pandit Pirthi Nath's junior and protégé, took me at once under his sheltering care. Now, Bansi Babu had various interests in life. He was a zamindar, a banker in a way, and he was a friend of all, ready to do every one a good turn. A young man of his community, who sought employment in a bank; was asked to furnish security for good conduct. He went to Bansi Babu and Bansi Babu readily stood security for him in the sum of Rs. 2,000. This man got his employment but some years later some money disappeared from the bank and he was held liable and Bansi Babu was called upon, under his bond, to make good the loss. Naturally he wanted to escape liability. The question was whether the terms of the bond covered the case. The bank took the matter in court and the Kanpur courts decided that Bansi Babu was liable and must make good. He came to Allahabad and took the case to Pandit Motilal and Dr. Tej Bahadur Sapru, most intimate friends. As a matter of fact I think Bansi Babu always used to stay, when he visited Allahabad, at Anand Bhawan. Both of them declared the case to be hopeless. And then he came to me. I was rather surprised but he was quite frank about it. He said he had consulted Pandit Motilal, and Motilalji had read the papers and pronounced the case to be hopeless. But he had also said: "Bansi Babu, your case is a small one. It appears to me to be hopeless, but I suggest that for these small cases you should

go to the new athletes, like Jawaharlal and Kailas Nath. Show the papers to them. They have plenty of time and very likely they would be able to discover some point or other or invent it. Neither I nor Tej Bahadur have the time nor the inclination to do so." So Bansi Babu came to me. After repeating these remarks he told me "I have already seen Jawaharlal and I have come to you. No matter what may happen, I am determined to fight this case in court. I have never lost a case so far and I am sure that you two would win it for me." I laughed and said—"Well, this is not seeking advice but giving a command." So, Jawaharlal and I studied the case and thought we had found something. We drafted the grounds of appeal and I said to Jawaharlal—"Now you must see the case through in the first preliminary hurdle for admission." He did so and very successfully indeed. The case was admitted but then poor Bansi Babu himself died and before the appeal could come on for final hearing Jawaharlal too had drifted away into politics. The hearing of the appeal constitutes in itself rather an epic story, but I shall not give it here because I am dealing with Jawaharlal and not with myself.

In the other case we were opposed to each other. The story is indeed so remarkable and so amusing—and in its final setting it became almost a comedy—that even after the passage of 30 years whenever I think of it I cannot help laughing outright.

But I must first, to make it intelligible, indulge in an introduction. As I have said above, Motilalji came from Kanpur and so did I, and for years, as a beginner in the High Court, Kanpur people sustained me with their briefs. Some of them would take no denial, no matter how rotten the case might appear to be. One day in the hot weather an individual, Narain Das by name (of Bansi Babu's community) came with a judgment of a case which he had



lost in Kanpur and asked me to file an appeal. He told me that the case was a pretty hopeless one, but the appeal must be filed because if the judgment stood he would be ejected from a house which his family had been occupying for nearly 50 years, and no suitable house was then available to him in Kanpur and the rains were coming and he wanted some time to avoid ejectment, and this could only be done by filing an appeal. I read the papers and indeed the case seemed a perfect flop. It had originated in a dispute among womenfolk. It appeared that a well-to-do individual (Narain Das's maternal grandfather) had 3 sons and a daughter. He was a man of property and owned several residential houses. The daughter was married in a rather modest family and the father allowed his daughter to occupy one of these houses for her residence. This she continued to do not only in her father's lifetime but after his death also with the consent of her brothers. These people were undoubtedly the owners of the property. They were recorded as owners in the municipal registers, paid all rates and taxes assessed upon it and, if I am not mistaken, they used a portion of the house for keeping their cows. Subsequently the three brothers divided their patrimony. This particular house fell to the share of one of them, who was himself childless and on his death his widow, as his heir, became entitled to the house. That was the situation about the year 1914. In the house lived the sister-in-law of this lady with her children and grandchildren. I was told that the two ladies were formerly on good terms, but recently on the bank of the *Ganga* at Kanpur they had some quarrel among themselves and the lady who was the owner of the house had thereupon said to her sister-in-law "Get out of my house." Naturally she would not, hence this litigation. There was really no answer to the case and no gift of the house was alleged. The defendant's lawyers, however,

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I imagine for gaining as much time as they could, put up a plea of adverse possession and found a rather stupid Subordinate Judge to uphold it. On appeal to the District Judge, who was himself a Hindu, the game was up. Adverse possession was out of the question. Such cases where poor relations are allowed possession as licensees are fairly common and therefore the District Judge awarded a decree for possession. As I have said, Narain Das himself knew that there was nothing in the case and he wanted to stay in the house another 4 months. I told him plainly that this matter was quite beyond me. If a junior like myself argued it, very likely the appeal would not be admitted in the summary hearing and therefore we must have a senior counsel of some eminence to lend the weight of his personality to see it through the preliminary hurdles. Narain Das readily agreed and I induced Dr. Tej Bahadur to accept the case as my senior. The appeal was filed before a Judge, who was rather lenient in admissions. Dr. Sapru got up and said "The question of law was limitation," and the learned Judge simply said "Admit, let notice go." So, one hurdle was crossed. Later I applied for stay of execution, which was granted as a matter of course. Some weeks afterwards Pandit Motilal hailed me in the Advocates' library and said in his well-beloved joking way "Kailas Nath, have you made it a rule to file every case of Kanpur?" At first I did not appreciate to what he referred and said "Bhaiji, what is it about?" Thereupon he said "That old woman came to Anand Bhawan and went to Jawaharlal's mother and was full of her case. Later she spoke to me about it and I had to accept it. It is a hopeless case. How did you put it through?" So I told him all the story and he accepted the respondent's brief.

In due course, I think after about 2 years, the appeal came on for final hearing before the Chief Justice, Sir

Henry Richards, and Mr. Justice Rafique. It was one of the hottest days in the hot weather of 1917 for which Allahabad is so famous or notorious. Both the Judges were well-equipped with rose water which it was then the fashion for the Judges in Allahabad to sprinkle on their head and on their face to keep themselves cool. That amenity, of course, was not permissible to the Advocates who sweltered at the Bar. Pandit Motilal was then in Allahabad. Very likely he had some more urgent work at home or it may be that on that day he had nothing else except this wretched second appeal. He thought it was not necessary for him to attend the court and he handed over the brief to Jawaharlal, I imagine, with the remark that "You will have just to sit in court and would not be called upon to argue." So, Jawaharlal was there as a brief-holder for his father. The court room was crowded. My senior, Dr. Tej Bahadur, was sitting by my side. I am now trying to tell the story exactly as it happened. Both Dr. Sapru and I knew that there was really nothing in the case. When it was called, I naturally expected Dr. Sapru to get up, but he turned to me and said "Kailas Nath, there is nothing in it. You get up and give it a decent burial." So, I got up and started the show. I only gave the facts and repeated many times that the daughter and her family had been living in the house for over 40 years and I added to reinforce the statement "My Lords, Narain Das was actually born in this house." At that stage I noticed Sir Henry Richards went off into a doze, he put the paper-book before his face and was asleep. The brother Judge noticed it also and as for two Judges to go off to sleep together would have been a scandal, this Judge, Mr. Justice Rafique, whom alone I could address at the time, put to me some troublesome questions and I was trying to answer them. This conversation was going on

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when I saw the paper-book in front of Sir Henry's face rustling. He had evidently woken up and was attempting to show to everybody that he was not in fact sleeping but deeply studying the case all the time. I saw him reading the plaint where in the array of parties Narain Das was stated to be 35 years of age. The last words uttered by me before he went to sleep were "My Lords, Narain Das was born in this house," and he, I noticed it, turned over the page again and then he suddenly turned towards me and said "Did you say that Narain Das was born in this house?" I said "Yes, my Lord, that is so."

Chief Justice : "But Narain Das is aged 35."

K. K. : "My Lord, that is exactly my point. The family has been in this house for the last 50 years and children and grandchildren have been born."

Chief Justice : "Absurd, absurd. Who appears on the other side."

Before I could attempt to add any word of my own in the way of any foolish reinforcement of my argument, Dr. Sapru tugged at my gown and whispered to me to sit down at once and I did so, and now Jawaharlal had to rise. Sir Henry Richards was a very masterful Judge, I think he was the most intelligent Judge that I have come across in all my 40 years in India, but he was impatient and in his desire to do justice, as he saw it he would surmount all sorts of obstacles. Jawaharlal, of course, began quietly by saying that there was a clear case of finding of fact by the District Judge on this question of possession which had started only as a license. Sir Henry Richards remarked most decisively "Yes, I know, I know; this is a finding of fact and we cannot interfere with it but let me tell you this is an absolutely perverse finding of fact. The plaintiff has no justice on her side." Sir Henry went on like this for some time and then he suddenly said "But you are a woman,

how do you come into the picture?" Jawaharlal referred to the partition among the 3 brothers and his client having inherited the house from her husband. But the Chief Justice would have none of it.

"This is a joint family property. A Hindu woman cannot be an heir in a joint family. You have to prove partition among the 3 brothers."

Thereupon Jawaharlal quoted a sentence or two from the judgment of the District Judge. But Sir Henry was intractable.

"This is a mere casual observation; this is not a finding. Show me where you suggested it in your pleading as to how you got it. What is the evidence of partition?" and so on and so forth.

Jawaharlal then argued that this point had never been denied by the defendants and if their Lordships thought that it has not been put in the proper order, then the case might be remitted to the lower court for a proper decision upon it.

Sir Henry would not listen and said again warmly "This is not a case in which the court should assist you in any way in the slightest degree. It was your business to put this allegation in proper manner in your plaint, to have an issue upon it and to prove it. We won't send in an issue down at this stage."

Jawaharlal struggled valiantly for over an hour. But who could struggle against such a judicial tidal wave? I imagine even the most experienced counsel would have been washed away. Jawaharlal could not stand it. What to say of Jawaharlal, even Mr. Justice Rafique, could not say anything. Judgment was delivered then and there, the appeal was allowed and the suit dismissed with costs.

One can imagine the furore caused in Kanpur and the great loss of face of the old lady. She came running to



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Anand Bhawan again and wept and shed tears and Motilalji for once adopted what was for him a most unusual course of filing an application for review of judgment. As one of the two Judges had gone on leave, this application came on for preliminary hearing after many months. Motilalji took care to be present in court personally. I was also sitting as an interested listener, and this is what happened. When the application was called, Motilalji got up and as soon as he had stated the facts briefly and was beginning to start an argument, Sir Henry grinned broadly and burst forth "Pandit, I remember this case very well and Jawaharlal argued it excellently, and right or wrong, we will not have cases re-argued in this court. Application dismissed. Call the next case." He said it all with such good humour and so quickly that even Motilalji could not help laughing, so did all of us, and the Judges too. Jawaharlal was not that day present in court, and I wonder whether he remembers the case at all—the last 32 years have been of such tremendous stresses and crises in the life of the nation with which his own has since been so closely intertwined.

I think after 1919 Jawaharlal appeared many times in law courts, not as an advocate but as a prisoner at the bar. These appearances of course have become and will always remain historic in our national story. They were so many milestones in our march to freedom.

His last appearance as an advocate was indeed on a historic occasion. It was in 1945 in the Red Fort at Delhi at the time of the I.N.A. trials. I do not think there has ever been a single occasion in India ever since the British rule when there has been an assembly of such a galaxy of Indian talents so distinguished both at the Bar and in the public sphere. In that year in the public estimation the I. N. A. represented the cause of freedom and to uphold that cause at the Bar appeared Jawaharlal Nehru,

Tej Bahadur Sapru, Bhulabhai Desai, Bakshi Tek Chand, Kanwar Duleep Singh, P. K. Sen, Asaf Ali and others. Even the counting of these names brings to mind vividly the memories of long lives spent in the service of the country on the national platform, on the High Court Benches, at the Bar and in Legislative Assemblies. It fell to me also to be a humble member of that noble company and to share with them the ennobling and exhilarating experiences of those stirring days. Jawaharlal's appearance was a token, a symbol of his close identification with the national struggle for independence carried on under exceptionally difficult circumstances by a great set of people. I need not enter into the details of I. N. A. trials here. That is another story.

Jawaharlal is now at the peak of his destiny and is engaged in upholding, maintaining and sustaining the cause of Indian independence and freedom at the Bar of history. Prayers will go forth from every hearth and home in India on this his birthday that long may he be spared to plead that noble cause and his efforts be crowned with success to make this ancient land and its inhabitants glorious and prosperous.

WHAT THEY THINK OF ME*

I DON'T KNOW why I have agreed to talk to you on this topic—"What They Think of Me;" very likely because I like the Director of the Calcutta Radio and find it difficult to refuse any request of his. I regret it now. It is a difficult topic to talk about. I know, or I think I know, what I think of others; whether I would care to speak about it is a different matter altogether. People often say what they think of others only in their own biographies, or when those others are dead. To do so in their life-time may be risky or unpleasant or unfair. You are, however, all the time quite clear in your mind what you think of them.

What one, however, is afraid to do is to say even in the solitude of his bed-chamber what he thinks of himself. Even to think of what you are is often so painful, so humiliating, the more so, when you know you are sailing under false colours. You do not really possess a tithe of the good qualities you assert you do, or others mistakenly suppose you do. Blessed are those who can afford to see unflinchingly their own likeness in the mirror of their heart, and are not stricken with sorrow and dismay at what they see. Theirs will be the kingdom of heaven.

Now comes the most difficult problem—What they think of me. How am I to know? Why should anybody worry about me? It is only my vanity which makes me think that anybody is thinking of me. They, I am sure, have something better to do than to think of me. And suppose they do think of me, why should they let me know

* A broadcast talk from the All-India Radio, Calcutta (24th July, 1949).

about it ? If they say all manner of good things about me to my face, their sincerity is suspect. Flattery is so prevalent : saying nice things about others is considered good manners and politeness is a virtue to be cultivated. Then again, when the frank opinion of others about myself is passed on to me by my candid friends, I am left in doubt whether it is genuine stuff or something has been added to it to make it more pungent and fiery, in the process of decanting. It is really so difficult to get at other people's real opinions about oneself.

Sometimes and particularly in relation to young people just about to start life, these opinions and estimates may be in the nature of prophecies. For instance, in my boyhood, I was a very shy lad, almost tongue-tied in company, and when a sister-in-law of mine, very senior in age, witty and experienced in the ways of the world, heard that a career at the bar was being thought of for me, she stood aghast and said it was sheer suicide. I won't be able, she said, to utter a word before the judge and would make myself a subject of jest and public merriment. She proved correct in the beginning. When I went into court with my first application—this was in 1908 and the fee was Rs. 15—the judge looked up at me, enquiring with his eyes what it was all about, but I had turned almost into a stone, my tongue was dry, I could not utter a word, and I just managed to shove the application before him. He saw my plight, smiled kindly at the very young, bashful, nervous pleader before him, read the petition and passed the order prayed for. So was my brilliant sister-in-law justified. But this did not last long; and soon I was possessed by the presiding demon of the law courts and learnt to talk, my opponents said, interminably, and to argue till I persuaded the judge to pronounce his judgment in my favour in sheer disgust in order to get rid of me.

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My wife and my mother indeed complained that I would not leave this habit of talking and arguing behind me in the law courts but it pursued me at home too. My wife, a wise woman, who rather believed in the gospel of silence, once late in life confided to her daughter : " Your father does not recognise the beauty of silence in company, he is always fond of talking;" and she added " He does not know how to take rest either, he is always doing something, has some genuine work or creates it for himself." And my mother, whose acute intellect and power of debate was noteworthy, whenever she found herself short of argument would finally try to overwhelm me by remarking " You are a pleader ; who can win against you in argument ? " or " You bring your habit of special pleading in the home also." To this of course there could be no answer.

Indeed lawyers suffer exceedingly from the popular notion that long practice makes them exceptionally nimble, and wherever they may be, they are always engaged in the delightful pastime of confounding others and making the worse appear the better reason; they can argue, it is said, with the greatest vigour and earnestness on either side in a debate; they always speak as briefed and have no faith nor convictions of their own. In the course of a long life, friends whenever put in a tight corner in the course of discussion, have tried to wriggle out of an untenable position by saying " Dr. Sahib, you are a lawyer, how can we argue with you ? " to which I used to reply—" Now, don't be so modest; please confess your bankruptcy of argument frankly."

To an advocate what the judges, and his colleagues at the bar, and litigants think of him is of vital importance.

There are judges and judges. It was a great pleasure to work before judges who were not only learned but were also confident of their ability to assess an argument properly.

They treated as an intellectual exercise and enjoyed it. They delighted in debate and in the impact of mind against mind. Others, less agile, were shrewd. They thought me clever, but on occasions sought to turn the tables upon me by asking innocently how would I have decided the case myself. Sometimes I evaded an answer by saying that even as a feat of imagination I could not climb the Olympian heights of the Judicial Bench. But often, as I almost invariably thought for the moment quite honestly that my client was an innocent little lamb, I had no difficulty in giving my extra-judicial advice in his favour. Yet another group of judges, slow-witted, and lacking confidence in themselves, were definitely quite suspicious of me. I might land them anywhere, they thought. The best way I discovered to disarm their suspicion was to let the facts of the case speak for themselves, and not to thrust my own personality at all into the case by any argument of mine. Whenever I considered it necessary I only insinuated gently that if they slaughtered my innocent lamb, it was their concern and not mine; for their wrong decision they would suffer, not I. I was only a detached spectator of the game.

As for my colleagues, with all my faults they loved me still and said so. They too were inclined to be suspicious. They knew that I did not work up my cases very industriously and sometimes simply bluffed them. One respected friend was once very caustic about the virginity of my brief. But many thought, I don't know why, that I had an uncanny gift of giving an unexpected twist to the case, making short shrift of it by one sudden stroke. To put it in a word, they thought I was almost a satan incarnate in ingenuity as a forensic conjurer. I think my clients also shared this view, but in a different way. They thought I was under the protection of Angels (not fallen Angels, but those in

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grace) who helped me in winning my cases. I came to know of this in diverse ways.

There was the client who was extremely anxious to make me accept his brief and appear for him at Ajmer in Rajasthan. I did so for a substantial fee, and the appeal was decided in his favour without my being called upon to argue. I learnt subsequently that an astrologer had predicted the result and strongly advised my engagement. Pray, don't think that the judge was my relation or friend; he was an Englishman whom I didn't know from Adam. Another client came at the eleventh hour and when I gently rebuked him for the delay he said he was in suspense, and had finally made up his mind to engage me after lots had been cast in a temple before the deity, and my name had been drawn in this lottery. Really some of my clients thought I was a very holy man whose mere *darshan* would do the trick in court. A case was once called in the Allahabad High Court and when I told my client, respondent in the appeal, that I would be coming presently he begged: "Do please come and just show your face, that would be enough for me." I acceded to his wish, and just as I was stepping into the Court Room the Judge saw me and, believe it or not, waved me out of Court indicating that my presence was unnecessary. I immediately turned back and congratulated the client on his success, and he replied: "Didn't I tell you so, Sir, your sight was sufficient." So I came to live as a lawyer in a halo of sanctity.

In public life and as a Minister, I soon found that they loved me most and thought well of me who expected nothing from me. Pre-eminent among them was the peasant in his hut. He took me to his heart; whenever I went to him he loaded me with hospitality and never asked anything for himself, his relations and friends. Whatever he asked was for the whole community. I salute him. As for



others, it is seldom a case of love at first sight; love between us takes time to grow. They feel in the beginning I am impatient, sceptical and too quick with a negative answer, but ultimately, I hope, they think I mean well and am not really so frigid and unfeeling as I attempt to appear. They also think I am no politician, because I try to see the other side of the medal also.

What they think of me in Bengal, you my listeners, know better than I do. I know only this much that every door is open to him who has no power, and has nothing to give but himself in public service.